

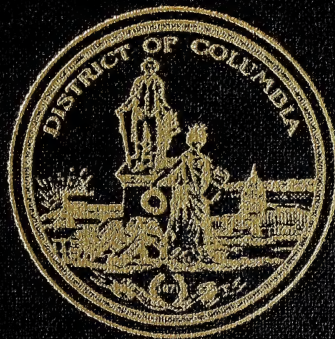
DISTRICT OF COLUMBIA OFFICIAL CODE

2001 Edition

TITLES 6 and 7

Housing and Building Restrictions and Regulations

Human Health Care and Safety



**40th ANNIVERSARY
of
HOME RULE**

DISTRICT OF COLUMBIA

OFFICIAL CODE

2001 EDITION

Containing the Laws, general and permanent in their nature,
relating to or in force in the District of Columbia (Except such
laws as are of application in the General and Permanent
Laws of the United States) as of September 13, 2012.

VOLUME 6

Title 6

Housing and Building Restrictions and Regulations
to

Title 7

Human Health Care and Safety



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Foreword to 2013 Commemorative Set

LexisNexis presents the '2013 republication of the District of Columbia Official Code, 2001 Edition to the D.C. bench and bar and to the citizens of the District of Columbia in a sincere belief that it will prove a material contribution to the orderly and efficient conduct of the government of the District and to the practice of law. LexisNexis is proud to help commemorate the 40th anniversary of Home Rule for the District of Columbia.

LexisNexis continues its tradition of excellence with its District of Columbia Official Code, 2001 Edition. This 2013 Volume 6 replaces any existing Volume 6 of the 2001 Edition and its 2012 Supplement, both of which may now be discarded, recycled, or retained for historical reference. Future supplements will be keyed to this 2013 Volume and not to any of its predecessors.

The District of Columbia Official Code, 2001 Edition, represents the eighth compilation of the laws of the District of Columbia and reflects an extensive renumbering of the 1981 Edition. Users should consult the historical citations at the end of each statute, and corresponding amendment notes, as guides to legislative currency. Research features such as case annotations, section references, effect of legislation notes, editor's notes, and the comprehensive index have been prepared by LexisNexis. Your set is kept up to date through regular supplementation, free access to the on-line Official Code at <http://www.lexisnexis.com/hottopics/dccode> and the periodic replacement of volumes. All case citations are Shepardized for accuracy and continued relevance. LexisNexis also publishes a District of Columbia Advance Legislative Service (ALS). The ALS gives you the latest session laws as they are passed, along with tables showing you which sections of the Code are affected.

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June 2013

PREFACE TO THE 2001 EDITION

The 2001 Edition of the District of Columbia Official Code marks the eighth time that a compilation of the laws of the District of Columbia has been published by, or under the authority of, the government of the District of Columbia or that of the United States. The District of Columbia Code was first published in 1929; eleven years later, the Second Edition (1940) was published; another eleven years later, the Third Edition (1951); ten years later, the Fourth Edition (1961); six years later, the Fifth Edition (1967); another six years later, the Sixth Edition (1973); and 8 years later, the Seventh Edition (1981) was published. The time between the publication of the Seventh Edition and this Eighth Edition represents the longest period, by almost a decade, that the District of Columbia Code has gone unrevised in its 72 year history.

The District's Charter, which in 1973, established the current tripartite government of the District of Columbia, makes it incumbent upon the legislative branch to publish and codify every act of the Council, as the Council directs, upon becoming law, so that the residents of the District may have ready access to the laws by which they are governed. In 1973, however, the framers of the District's constitution could not have foreseen the incredible technological advances that would occur in the next 25 years nor the impact they have on the Code.

With the close of the 20th Century the world has witnessed the triumph of the Information Age, the rise of the World Wide Web, and the explosion of word processing and data storage technology. These phenomena have helped make the reproduction of legal text and data a fast, easy, and inexpensive enterprise, giving rise to a plethora of publishing mediums, and have made it a relatively simple task to reproduce existing legal text, including the District of Columbia Code. The rapid rise of the Computer Age has allowed virtually anyone with an ordinary personal computer to reproduce and compile the laws of the District of Columbia.

The laws of the District, however, are fluid, not stagnant, as they are amended several times each year. The quality and accuracy of publications not directed by the Council are beyond its control. The Council can only warrant the Code for which it has authorized publication. Therefore, in order to ensure that the residents of the District may distinguish between the compilation of District laws as produced under the direction of the elected officials of the District of Columbia and those of other persons, we have added the word "Official" to the title of the Code. Also to ensure that the Council never loses the right to publish its own laws, the government of the District of Columbia has retained the copyright to the District of Columbia Official Code.

The codified laws of the District of Columbia are created as a result of legislative action on the part of 13 individuals elected by the residents of the

District of Columbia to enact the laws that govern the District, and by the Congress. Once the legislative process is complete, the Council, through its delegation of authority to its Office of the General Counsel, codifies the laws in the form of this Code. In the process of codification, the Office of the General Counsel interprets any discrepancies in the drafting of the laws using commonly recognized rules of statutory construction. No other entity is authorized by law to make these determinations. As set forth by federal law and recognized by the Courts of the District of Columbia, this Code establishes *prima facie* evidence of the laws in force in the District of Columbia.¹ It is this continuity of authority, from enactment to codification to judicial review that gives this Code its authenticity and officiality as the content of the laws of the District of Columbia.

The 2001 Edition represents a recodification of the 1981 Edition in that it contains a reorganization of the presentation of the laws, inclusion of some previously omitted legal provisions, and the omission of non-substantive extraneous provisions. The theory behind the recodification is to purify the organization of the Code which over many decades has seen the haphazard mixing of original (“organic”) provisions of laws throughout the Code. In the 2001 Edition, we have established a system of codification that follows the legislative drafting principals established over many years in the Council’s Office of the General Counsel.

The recodification is not an overhaul of the Code. Although a cleanup of the antiquated, repealed and omitted provisions is long overdue, it is not the province of the Office of the General Counsel to determine which laws should be expunged as obsolete. Such decisions should be left to a working group commissioned by the Council to recommend revisions to the Code. The Office of the General Counsel has simply separated the organic laws into discrete divisions and topical categories. As much as is possible, we have followed a rule that requires that all organic law remain intact: closely following the layout of the originating act. We have retained notes to repealed sections to aid in legal research and preserved the numbering style that was first introduced in the Second Edition. Thanks to the resourcefulness of the publisher and the Council’s Office of the General Counsel staff, we have corrected provisions of law erroneously added to, or deleted from, prior editions.

The Code is organized into eight Divisions of practical law: government organization; judicial organization; decedent estates; criminal law; business law; education; property; and general laws. Each division is subdivided by subject matter called **Titles**, organic laws, called **Chapters** and **Subchapters**, and finally, individual **Sections** representing the individual sections of organic law. Occasionally, **Subtitles** are used to organize chapters of organic law, **Units** to organize subchapters, and **Parts** and **Subparts** to organize the additional divisions within the organic law. One important change that the user will notice, and hopefully appreciate, is that the District’s Charter, the Home Rule Act, is codified in its entirety in one location so that the

1. See 1 U.S.C. § 204(b) (1994); *Sheetz v. District of Columbia*, 629 A.2d 515, 519 (D.C. 1993).

framework of the current District government can be readily found. We hope that the organization of the 2001 Edition of the District of Columbia Official Code will serve as a foundation for further refinement by future law revision commissions or their equivalent.

The 2001 Edition has been prepared under the supervision of Benjamin. F. Bryant, Jr., Codification Counsel, Office of the General Counsel, Council of the District of Columbia.

_____/s/_____

Linda W. Cropp

Chairman

Council of the District of Columbia

_____/s/_____

Charlotte Brookins-Hudson

General Counsel

Council of the District of Columbia

USER'S GUIDE

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the District of Columbia Official Code, a User's Guide has been included in Volume 1 of the Code. This guide contains comments and information on the many features found within the District of Columbia Official Code intended to increase the usefulness of the Code to the user.

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4. Public Care Systems.
5. Police, Firefighters, Medical Examiner, and Forensic Sciences.
6. Housing and Building Restrictions and Regulations.
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9. Transportation Systems.
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- *21. Fiduciary Relations and Persons with Mental Illness.

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22. Criminal Offenses and Penalties.
- *23. Criminal Procedure.
24. Prisoners and Their Treatment.

*Title has been enacted as law.

Title

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- *28. Commercial Instruments and Transactions.
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- 48. Foods and Drugs.
- 49. Military.
- 50. Motor and Non-Motor Vehicles and Traffic.
- 51. Social Security.

*Title has been enacted as law.

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2. District of Columbia Housing Authority.
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4. Building Lines.
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Subchapter I. Improvement of Housing Conditions.

§ 6-101.01. Declaration of policy; acquisition of property; improvements; sale, lease, or management; loans by Authority.

(a) It is hereby declared to be a matter of legislative determination that the conditions existing in the District of Columbia with respect to the use of buildings in alleys as dwellings for human habitation are injurious to the public health, safety, morals, and welfare; and it is hereby declared to be the policy of the United States to protect and promote the welfare of the inhabitants of the seat of the government by eliminating all such injurious conditions by employing all means necessary and appropriate for the purpose; and control by regulatory processes having proved inadequate and insufficient to remedy the evils, it is in the judgment of Congress necessary to acquire property in the District of Columbia by gift, purchase, or the use of eminent domain in order to effectuate the declared policy by the discontinuance of the use for human habitation in the District of Columbia of buildings in alleys, and thereby to eliminate the communities in the inhabited alleys in said District, and to provide decent, safe, adequate, and sanitary habitations for persons or families substantially equal in number to those who are to be deprived of habitation by reason of the demolition of buildings under the terms of this subchapter, and to prevent an acute shortage of decent, safe, adequate, and sanitary dwellings for persons of low income, and to carry out the policy declared in the Act approved May 18, 1918, as amended, of caring for the alley population in the District of Columbia, and to that end it is necessary to enact the provisions hereinafter set forth.

(b) In order to remedy the conditions and evils hereinbefore recited and to carry out the policy hereinbefore declared, the Mayor of the District of Columbia is hereby authorized and empowered to acquire by purchase, gift, condemnation, or otherwise:

(1) Any land, building, or structures, or any interest therein, situated in or adjacent to any inhabited alley in the District of Columbia;

(2) Any land, buildings, or structures, or any interest therein, within any square containing an inhabited alley, the acquisition of which is reasonably necessary for utilization, by replatting, improvement, or otherwise, pursuant to the provisions of this subchapter and subchapter II of this chapter, of any property acquired under paragraph (1) of this subsection; and

(3) Any other land, together with any structures that may be located thereon, in the District of Columbia that may be necessary to provide decent, safe, adequate, and sanitary housing accommodations for persons or families substantially equal in number to those who are to be deprived of habitation by reason of the demolition of buildings pursuant to the provisions of this title.

(c) The Authority is authorized and empowered to replat any land acquired under this subchapter and subchapter II of this chapter; to pave or repave any street or alley thereon; to construct sewers and watermains therein; to install streetlights thereon; to demolish, move, or alter any buildings or structures

situated thereon and erect such buildings or structures thereon as deemed advisable; provided, however, that the same shall be done and performed in accordance with the laws and municipal regulations of the District of Columbia applicable thereto.

(d) The Authority is hereby authorized and empowered to lease, rent, maintain, equip, manage, exchange, sell, or convey any such lands, buildings, or structures acquired under this title for such amounts and upon such terms and conditions as it may determine; provided, that sales of real property shall be made at public sale to the highest responsible bidder on terms satisfactory to the Authority after advertising for 3 consecutive weeks in at least 1 daily newspaper of general circulation published in the District of Columbia; provided, however, that the Authority may, without advertising, sell such property to a quasi-public institution or agency not organized or operated for private profit at not less than the cost of such property to the Authority, including improvements; and provided further, that if any such lands, buildings, or structures are required for the purposes of the United States or of the District of Columbia, they may be transferred thereto upon payment to the Authority of the reasonable value thereof.

(e) The Authority is authorized and empowered to aid in providing, equipping, managing, and maintaining houses and other buildings, improvements, and general community utilities on the property acquired under the provisions of this title, by loans, upon such terms and conditions as it may determine, to limited dividend corporations whose dividends do not exceed 6 per centum per annum, or to home owners to enable such corporations or home owners to acquire and develop sites on the property; provided, however, that no loan shall be made at a lower rate of interest than 5% per annum, and that all such loans shall be secured by reserving a 1st lien on the property involved for the benefit of the United States.

(June 12, 1934, 48 Stat. 930, ch. 465, § 1; June 25, 1938, 52 Stat. 1186, ch. 691, § 1.)

Cross references. — Building regulations and zoning, powers and duties of Council and Mayor, see § 1-303.04.

Control and repair of streets, see § 9-101.01.

Municipal Center, rental of buildings, see § 10-602.

Public land, sale, see § 10-801 et seq.

Surveyor, duty to make plats at request of President, see § 1-1312.

Surveyor, recording of plats, see § 1-1305 et seq.

Section references. — This section is referred to in §§ 1-202.02, 6-101.04, 6-101.05, 6-102.04, and 6-103.01.

Prior Codifications. — 1981 Ed., § 5-101.

1973 Ed., § 5-103.

References in text. — “The Act approved May 18, 1918, as amended,” referred to near the end of subsection (a) of this section, refers to the Act of May 16, 1918, 40 Stat. 550, ch. 74, which was a temporary act authorizing the President to provide housing for war needs.

Transfer of Functions. — The functions of the President under this section were transferred to the Mayor by § 1-202.02.

Delegation of Authority. — Delegation of Authority to Implement the Provisions of the District of Columbia Alley Dwelling Act, see Mayor’s Order 88-30, December 15, 1987; Mayor’s Order 88-161, December 15, 1987.

CASE NOTES

ANALYSIS

Actions and proceedings.
Federal civil rights.
United States property.

Actions and proceedings.

Complaint wherein individual tenants of public housing facilities in District of Columbia and associations of such tenants sought declaratory and injunctive relief with respect to alleged failure to properly maintain and repair such facilities, which were owned by United States, stated claim for which relief could be granted, notwithstanding contentions of insufficient resources for greater degree of maintenance and repair, and that District of Columbia housing regulations did not apply to dwellings owned and operated by United States. Housing Act of 1937, §§ 1, 1 et seq., 2(1, 2), 15(1, 3, 4) as amended 42 U.S.C. §§ 1401, 1401 et seq., 1402(1, 2), 1415(1, 3, 4); D.C. Code § 5-103 et seq. *Knox Hill Tenant Council v. Washington*, 448 F.2d 1045, 1971 U.S. App. LEXIS 12057 (C.A.D.C. 1971).

Under District of Columbia ejectment statute as amended by 1970 Court Reform Act, District Court does not have original jurisdiction over ejectment proceedings brought by the United States; intent of Court Reform Act was to vest exclusive jurisdiction of all ejectment proceedings in Superior Court, even those brought by the United States. 18 U.S.C. §§ 1345, 1441, 1441(a), 1446(d), 1447(c); D.C. Code §§ 5-103 et seq., 11-503, 45-910. *Herian v. United States*, 363 F. Supp. 287, 1973 U.S. Dist. LEXIS 12782 (1973).

In view of fact that, although trial court held that District of Columbia housing regulation did not apply to public housing accommodations in which tenants lived, it afforded tenants full benefit of principles which were based upon application of housing regulation, the District of Columbia Court of Appeals would not decide whether trial court's ruling was correct because result would be same in either event. *United States Housing Act of 1937*, § 1 et seq., 42 U.S.C. § 1401 et seq.; D.C. Code § 5-103. *Coleman v. United States*, 311 A.2d 496, 1973 D.C. App. LEXIS 387 (1973).

A proceeding to dispossess tenant from defense housing project which had been constructed by the Navy, and management of which had been turned over to National Housing Agency, was properly instituted by the United States, over objection that either National Capital Housing Authority or Federal Public Housing Administration was the proper party plaintiff, since the Lanham Act providing that proceedings for recovery of possession of property "developed" or "constructed" under the

act shall be brought by the administrator of Federal Public Housing, was not applicable, and since the United States may bring suit in its own name to enforce rights of any of its departments. *Lanham Act*, § 2, 42 U.S.C. § 1522; D.C. Code 1940, § 5—101 et seq. *Witteck v. U.S.*, 54 A.2d 747, 1947 D.C. App. LEXIS 163 (Cr.App. 1947).

Federal civil rights.

Requirement that public housing agency use leases which obligate public housing agency to maintain housing project in decent, safe, and sanitary condition did not give residents of housing project right to bring action in federal court based on alleged breach of underlying lease and, therefore, was not actionable under 42 U.S.C. § 1983, relating to deprivation of civil rights. *United States Housing Act of 1937*, § 6(l)(2), as amended, 42 U.S.C. § 1437d(l)(2). *Edwards v. District of Columbia*, 628 F. Supp. 333, 1985 U.S. Dist. LEXIS 14274 (1985), affirmed by 821 F.2d 651, 261 U.S. App. D.C. 163, 1987 U.S. App. LEXIS 7529 (1987).

Residents of housing project failed to demonstrate that they had been deprived of procedural due process by decision of District of Columbia to relocate them, where District had formal procedure for dealing with complaints concerning housing placement which residents did not utilize, and where residents neither argued that procedure was unconstitutional or that they had in any way been precluded from utilizing it. U.S. Const. Amend. 5. *Edwards v. District of Columbia*, 628 F. Supp. 333, 1985 U.S. Dist. LEXIS 14274 (1985), affirmed by 821 F.2d 651, 261 U.S. App. D.C. 163, 1987 U.S. App. LEXIS 7529 (1987).

United States property.

The District of Columbia Emergency Rent Act, which contains no express reference to United States as a landlord or to application of act to government owned housing of any kind, is not applicable to government owned defense housing in the District, such as the Bellevue Houses, and hence government can bring dispossessory proceeding against tenant without establishing any of the additional facts which the act requires landlord to establish as condition of recovery of possession of housing accommodations to which the act applies. D.C. Code 1940, §§ 5-103 et seq., 11-735, 11-773, 45-902, 45-1601 to 45-1611; *Lanham Act*, § 1 et seq. as amended 42 U.S.C. § 1521 et seq.; *Housing Act of 1937*, § 1 et seq., 42 U.S.C. § 1401 et seq.; *Second Supplemental National Defense Appropriation Act of 1941*, § 201, 54 Stat. 883, 884; *Emergency Price Control Act of 1942*, §§ 2, 302 as amended 50 U.S.C. Appendix, §§ 902, 942; *Housing and Rent Act of 1947*, § 1 et seq., 50

U.S.C.Appendix, § 1881 et seq. U.S. v. Wittek, 69 S.Ct. 1108, 1949 U.S. LEXIS 2937 (U.S.Dist.Col. 1949).

That legal title to public housing projects operated by National Housing Authority was in United States did not, under doctrine of sovereign immunity, preclude suit, which was not consented to by United States, and in which declaratory and injunctive relief was sought

with respect to alleged failure to properly maintain and repair public housing facilities in District of Columbia. Housing Act of 1937, §§ 1, 1 et seq., 2(1, 2), 5(b), 15(1, 3, 4), 23 as amended 42 U.S.C. §§ 1401, 1401 et seq., 1402(1, 2), 1405(b), 1415(1, 3, 4), 1421b; D.C. Code §§ 5-103 et seq., 5-113. Knox Hill Tenant Council v. Washington, 448 F.2d 1045, 1971 U.S. App. LEXIS 12057 (C.A.D.C. 1971).

§ 6-101.02. National Capital Housing Authority — Designation of agency; powers generally; approval of plans; condemnation proceedings.

(a) The Mayor of the District of Columbia may designate, for the purpose of carrying out the provisions of this subchapter and subchapter II of this chapter, such official or agency of the government of the United States or of the District of Columbia (hereinafter referred to as “the Authority”) as in his judgment is deemed necessary or advantageous, and the Authority shall have or obtain all powers necessary or appropriate therefor, including the employment of necessary personal services; but:

(1) All plans for replatting and/or method of condemnation under the provisions of this subchapter and subchapter II of this chapter, shall be submitted to and receive the written approval of the National Capital Planning Commission and of the Mayor of the District of Columbia; provided, however, that:

(A) Failure of the National Capital Planning Commission or of the Mayor of the District of Columbia to formally approve or disapprove in writing within 60 days after a plan has been submitted shall be equivalent to a formal approval; and

(B) Disapproval shall be accompanied by a written statement giving all the reasons for disapproval; and

(2) Any plan which shall involve action by any department, bureau, or agency of the United States or of the District of Columbia shall be made after consultation with such department, bureau, or agency.

(b) In the event condemnation proceedings are required to carry out the provisions of this subchapter and subchapter II of this chapter, the same shall be conducted in accordance with the provisions of Chapter 13 of Title 16.

(c) If the Authority determines in the case of any alley that it will be more advantageous to proceed in accordance with §§ 9-202.01 and 9-202.02, the Mayor of the District of Columbia shall be notified of such determination and proceedings shall then be had as provided in such sections for alleys and minor streets, except that if the total amount of damages awarded by the jury and the cost and expenses of the proceedings be in excess of the total amount of the assessment for benefits, such excess shall be borne and paid by the Authority.

(June 12, 1934, 48 Stat. 931, ch. 465, § 2; July 29, 1970, 84 Stat. 587, Pub. L. 91-358, title I, § 166(a); May 10, 1989, D.C. Law 7-231, § 15, 36 DCR 492.)

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Cross references. — Eminent domain condemnation proceedings, see § 16-1301 et seq.

Section references. — This section is referred to in §§ 1-202.02, 6-102.04, and 6-103.01.

Prior Codifications. — 1981 Ed., § 5-103. 1973 Ed., § 5-104.

Legislative history of Law 7-231. — Law 7-231, the "Technical Amendments Act of 1988," was introduced in Council and assigned Bill No. 7-586, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-285 and transmitted to both Houses of Congress for its review.

Transfer of Functions. — "National Capital Planning Commission" was substituted for "National Capital Park and Planning Commission" in the introductory language in paragraph (1) of subsection (a) of this section and in subparagraph (A) of that paragraph in view of the Act of June 6, 1924, ch. 270, § 9, as added by the Act of July 19, 1952, 66 Stat. 790, ch. 949, § 1, which transferred the functions, powers, and duties of the National Capital Park and Planning Commission to the National Capital Planning Commission.

The functions of the National Capital Housing Authority were transferred to the Depart-

ment of Public and Assisted Housing by Reorganization Plan No. 1 of 1987, effective December 15, 1987.

Delegation of Authority. — Delegation of Authority to Implement the Provisions of the District of Columbia Alley Dwelling Act, see Mayor's Order 88-30, December 15, 1987; Mayor's Order 88-161, December 15, 1987.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Actions and proceedings.
In general.

Actions and proceedings.

Complaint wherein individual tenants of public housing facilities in District of Columbia and associations of such tenants sought declaratory and injunctive relief with respect to alleged failure to properly maintain and repair such facilities, which were owned by United States, stated claim for which relief could be granted, notwithstanding contentions of insufficient resources for greater degree of maintenance and repair, and that District of Columbia housing regulations did not apply to dwellings owned and operated by United States. Housing Act of 1937, §§ 1, 1 et seq., 2(1, 2), 15(1, 3, 4) as amended 42 U.S.C. §§ 1401, 1401 et seq., 1402(1, 2), 1415(1, 3, 4); D.C. Code § 5-103 et seq. *Knox Hill Tenant Council v. Washington*, 448 F.2d 1045, 1971 U.S. App. LEXIS 12057 (C.A.D.C. 1971).

Where District of Columbia was not party to action to determine rights of grantor and grantees of quitclaim deed to alley, decree would not be binding upon District of Columbia. 18 U.S.C. § 2201; D.C. Code § 11-521. *Zlotnick v. Jack I.*

Bender & Sons, Inc., 285 F. Supp. 548, 1968 U.S. Dist. LEXIS 11557 (D.D.C.1968), modified by 422 F.2d 716, 137 U.S. App. D.C. 279, 1970 U.S. App. LEXIS 10776 (1970).

In view of fact that, although trial court held that District of Columbia housing regulation did not apply to public housing accommodations in which tenants lived, it afforded tenants full benefit of principles which were based upon application of housing regulation, the District of Columbia Court of Appeals would not decide whether trial court's ruling was correct because result would be same in either event. *United States Housing Act of 1937*, § 1 et seq., 42 U.S.C. § 1401 et seq.; D.C. Code § 5-103. *Coleman v. United States*, 311 A.2d 496, 1973 D.C. App. LEXIS 387 (1973).

In general.

The District of Columbia Emergency Rent Act, which contains no express reference to United States as a landlord or to application of act to government owned housing of any kind, is not applicable to government owned defense housing in the District, such as the Bellevue Houses, and hence government can bring dispossessory proceeding against tenant without establishing any of the additional facts which

the act requires landlord to establish as condition of recovery of possession of housing accommodations to which the act applies. D.C. Code 1940, §§ 5-103 et seq., 11-735, 11-773, 45-902, 45-1601 to 45-1611; Lanham Act, § 1, et seq. as amended 42 U.S.C. § 1521 et seq.; Housing Act of 1937, § 1 et seq., 42 U.S.C. § 1401 et seq.; Second Supplemental National Defense Appropriation Act of 1941, § 201, 54 Stat. 883, 884; Emergency Price Control Act of 1942, §§ 2, 302 as amended 50 U.S.C. Appendix, §§ 902, 942; Housing and Rent Act of 1947, § 1 et seq., 50 U.S.C. Appendix, § 1881 et seq. *U.S. v. Wittek*, 69 S.Ct. 1108, 1949 U.S. LEXIS 2937 (U.S. Dist. Col. 1949).

That legal title to public housing projects operated by National Housing Authority was in United States did not, under doctrine of sovereign immunity, preclude suit, which was not consented to by United States, and in which declaratory and injunctive relief was sought

with respect to alleged failure to properly maintain and repair public housing facilities in District of Columbia. Housing Act of 1937, §§ 1, 1 et seq., 2(1, 2), 5(b), 15(1, 3, 4), 23 as amended 42 U.S.C. §§ 1401, 1401 et seq., 1402(1, 2), 1405(b), 1415(1, 3, 4), 1421b; D.C. Code §§ 5-103 et seq., 5-113. *Knox Hill Tenant Council v. Washington*, 448 F.2d 1045, 1971 U.S. App. LEXIS 12057 (C.A.D.C. 1971).

Public housing authority authorized to receive federal funds for administration of low cost housing projects in accordance with the United States Housing Act is required to comply with regulations concerning tenant grievance procedures promulgated by HUD pursuant to the Housing Act. United States Housing Act of 1937, § 1 et seq., 42 U.S.C. § 1401 et seq.; D.C. Code § 5-103 et seq. *Nash v. Washington*, 360 A.2d 510, 1976 D.C. App. LEXIS 329 (1976).

§ 6-101.03. National Capital Housing Authority — Appropriations; power to borrow money; temporary architectural and engineering services.

(a) The Mayor is hereby authorized, in his discretion, to make immediately available to the Authority for its lawful uses and as needed, from the allocation made from the appropriation to carry out the purposes of the National Industrial Recovery Act, contained in the Fourth Deficiency Act, fiscal year 1933, now carried under the title, "National Industrial Recovery, Federal Emergency Administration of Public Works, Housing, 1933-1935," symbol 03/5666, not to exceed \$500,000 of any amount thereof dedicated for low-cost housing and slum-clearance projects in the District of Columbia, to be set aside in the Treasury and be known as "Conversion of Inhabited Alleys Fund" (hereinafter referred to as the "Fund").

(b) The Authority is hereby authorized and empowered to borrow such moneys from individuals or private corporations as may be secured by the property and assets acquired under the provisions of this subchapter and subchapter II of this chapter, and such moneys, together with all receipts from sales, leases, or other sources, shall be deposited in the Fund and shall be available for the purposes of this subchapter and subchapter II of this chapter. The Authority is hereby authorized and empowered to accept gifts of money from private sources; to borrow from the Treasury of the United States not to exceed \$1,000,000 in the fiscal year ending June 30, 1939, and a like sum in each of the 4 succeeding fiscal years, upon such terms and conditions as the Mayor may deem advisable, and appropriations for such purpose are hereby authorized out of the general fund of the Treasury; provided, that the Authority shall be obligated for the payment of interest at the going federal rate as defined in the United States Housing Act of 1937 [42 U.S.C. § 1437 et seq.].

(c) The Fund shall be available annually in such amount as may be specified in the annual appropriation acts.

§ 6-101.04 HOUSING & BUILDING RESTRICTIONS & REGULATIONS

(d) In carrying out the provisions of this subchapter and subchapter II of this chapter, the Authority is hereby authorized and empowered:

(1) To purchase books of reference, directories, and periodicals that are necessary in connection with its work; and

(2) To secure architectural and engineering services on specific projects; provided, that this authorization shall not apply to the employment of architects and engineers by the Authority on a permanent basis.

(June 12, 1934, 48 Stat. 931, ch. 465, § 3; June 25, 1938, 52 Stat. 1187, 1188, ch. 691, §§ 2-4; Aug. 2, 1946, 60 Stat. 809, ch. 744, § 9(b); Apr. 4, 1960, 74 Stat. 12, Pub. L. 86-400, § 1; Mar. 3, 1979, D.C. Law 2-139, § 3205(xx), 25 DCR 5740.)

Cross references. — Merit system, effective date provisions, see § 1-636.02.

Section references. — This section is referred to in §§ 1-102.02, 6-102.04, and 6-103.01.

Prior Codifications. — 1981 Ed., § 5-104. 1973 Ed., § 5-105.

Legislative history of Law 2-139. — Law 2-139, the "District of Columbia Government Comprehensive Merit Personnel Act of 1978," was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was ad-

opted on first and second readings on October 17, 1978 and October 31, 1978, respectively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

References in text. — The United States Housing Act of 1937, referred to in the second sentence in subsection (b) of this section, is the Act of September 1, 1937, ch. 896.

Transfer of Functions. — The functions of the President under this section were transferred to the Mayor by § 1-202.02.

§ 6-101.04. National Capital Housing Authority — Annual report — Proposals for operations of succeeding fiscal year.

The objects set forth in § 6-101.01 shall be accomplished as rapidly as feasible and to this end the Authority shall, in each annual report, set forth what it proposes to do during the next succeeding fiscal year.

(June 12, 1934, 48 Stat. 932, ch. 465, § 4; June 8, 1944, 58 Stat. 271, ch. 238, § 1; July 5, 1945, 59 Stat. 410, ch. 268, § 1; June 26, 1946, 60 Stat. 319, ch. 503, § 1; Aug. 2, 1946, 60 Stat. 801, ch. 736, § 18(a); Aug. 16, 1954, 68 Stat. 731, ch. 739, § 2.)

Section references. — This section is referred to in §§ 1-202.02, 6-102.04, and 6-103.01.

Prior Codifications. — 1981 Ed., § 5-105. 1973 Ed., § 5-106.

§ 6-101.05. National Capital Housing Authority — Annual report — Account of operations of preceding fiscal year.

(a) The Authority shall make a report to the Mayor of the District of Columbia, which he shall transmit to Congress at the beginning of each regular session, giving a full and detailed account of all operations under the provisions of this subchapter and subchapter II of this chapter, for the preceding fiscal year, including an itemization of all properties purchased

during such fiscal year, setting forth the assessed value of such properties, together with the purchase price therefor.

(b) Upon completion of the work contemplated by this subchapter and subchapter II of this chapter, the Mayor of the District of Columbia shall submit a complete report to Congress giving a full and detailed account of all operations for the entire period of operation. If such work is not completed by July 1, 1944, the Mayor of the District of Columbia shall, on July 1, 1944, or at the opening of the next regular session of Congress after such date, make a report to Congress covering the operations under this subchapter and subchapter II of this chapter, for the entire period to July 1, 1944, including a statement of what further work remains to be done, and recommendation for further legislation if in his opinion such legislation is necessary.

(c) It is hereby declared to be the purpose and intent of Congress that the objects set forth in § 6-101.01 shall be accomplished, if possible, on or before July 1, 1944, except that loans made under this subchapter and subchapter II of this chapter, may run for periods extending beyond such time.

(June 12, 1934, 48 Stat. 932, ch. 465, § 5; Apr. 4, 1960, 74 Stat. 12, Pub. L. 86-400, § 2.)

Section references. — This section is referred to in §§ 1-202.02, 6-102.04, and 6-103.01.

Prior Codifications. — 1981 Ed., § 5-106.

1973 Ed., § 5-107.

Transfer of Functions. — The functions of the President under this section were transferred to the Mayor by § 1-202.02.

§ 6-101.06. Publication of notice to owners of alley dwellings.

There shall be published 3 times each year during the month of January in a newspaper of general circulation published in the District of Columbia a notice to owners and tenants of alley dwellings and of other property in squares containing inhabited alleys that alley dwellings in such squares may be demolished, removed, or vacated, and that the squares may be replatted on or before July 1, 1955.

(June 12, 1934, 48 Stat. 933, ch. 465, § 6; June 8, 1944, 58 Stat. 271, ch. 238, § 2; July 5, 1945, 59 Stat. 410, ch. 268, § 2; June 26, 1946, 60 Stat. 319, ch. 503, § 2; Aug. 2, 1946, 60 Stat. 801, ch. 736, § 18(b).)

Section references. — This section is referred to in §§ 1-202.02, 6-102.04, and 6-103.01.

Prior Codifications. — 1981 Ed., § 5-107.
1973 Ed., § 5-108.

§ 6-101.07. Definitions.

As used in this subchapter and subchapter II of this chapter:

(1) The term “alley” means:

(A) Any court, thoroughfare, or passage, private or public, less than 30 feet wide at any point; and

(B) Any court, thoroughfare, or passage, private or public, 30 feet or

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more in width, that does not open directly with a width of at least 30 feet upon a public street that is at least 40 feet wide from building line to building line.

(2) The term “inhabited alley” means an alley in or appurtenant to which there are 1 or more alley dwellings.

(3) The term “alley dwelling” means any dwelling fronting upon or having its principal means of ingress from an alley. This definition does not include an accessory building, such as a garage, with living rooms for servants or other employees, if the principal entrance to the living rooms of the accessory building is from the street property to which it is accessory.

(4) The term “dwelling” means any building or structure used or designed to be used in whole or in part as a living or a sleeping place by 1 or more human beings.

(5) The term “person” includes any individual, partnership, corporation, or association.

(June 12, 1934, 48 Stat. 933, ch. 465, § 7.)

Section references. — This section is referred to in §§ 6-101.01, 1-202.02, 6-101.02, 6-101.03, 6-101.05, 6-102.04, 6-103.01, and 6-301.16.

Prior Codifications. — 1981 Ed., § 5-108. 1973 Ed., § 5-109.

Subchapter II. Additional Powers.

§ 6-102.01. “Housing project” and “development” defined.

As used in this subchapter:

(1) The term “housing project” shall mean any low-rent housing (as defined in the United States Housing Act of 1937 [42 U.S.C. § 1437 et seq.]), the development or administration of which is assisted by the United States Department of Housing and Urban Development.

(2) The term “development” shall mean any or all undertakings necessary for planning, financing (including payment of carrying charges), land acquisition, demolition, construction, or equipment, in connection with a housing project, but not beyond the point of physical completion.

(June 12, 1934, ch. 465, title II, § 201; June 25, 1938, 52 Stat. 1188, ch. 691, § 5.)

Section references. — This section is referred to in §§ 1-202.02, 6-101.01, 6-101.02, 6-101.03, 6-101.05, 6-101.07, and 6-103.01.

Prior Codifications. — 1981 Ed., § 5-111. 1973 Ed., § 5-112.

References in text. — The United States Housing Act of 1937, referred to in paragraph (1) of this section, is the Act of September 1, 1937, ch. 896.

§ 6-102.02. Housing projects; powers of Authority.

In addition to its other powers, the Authority shall have the power to acquire sites for and to prepare, carry out, acquire, lease, and operate housing projects, as defined in § 6-102.01, and to construct or provide for the construction,

reconstruction, improvement, alteration, or repair of any such housing project, or any part thereof, in the District of Columbia.

(June 12, 1934, ch. 465, title II, § 202; June 25, 1938, 52 Stat. 1188, ch. 691, § 5.)

Section references. — This section is referred to in §§ 1-202.02, 6-101.01, 6-101.02, 6-101.03, 6-101.05, 6-101.07, and 6-103.01.

Prior Codifications. — 1981 Ed., § 5-112. 1973 Ed., § 5-113.

Editor's notes. — Report on collections of rent: H.R. 3067, amended by H.R. 99-419, incorporated in Pub. L. 99-190 by § 101(c), the D.C. Appropriation Act, 1986, provided that the

Director of the Department of Housing and Community Development shall report every 6 months to the Council of the District of Columbia on collections of rent from public housing stock.

Establishment of District of Columbia Public Housing Advisory Board: See Mayor's Order 89-202, September 8, 1989.

CASE NOTES

ANALYSIS

Justification for actions.

Liability.

Nature, extent and delegation of powers.

Validity.

Justification for actions.

In proceeding for condemnation of land for construction of dwellings for families and persons of low income in the District of Columbia brought under amendment to the District of Columbia Alley Dwelling Act empowering the Alley Dwelling Authority to acquire sites for housing projects in the District, landowner was not entitled to show that alley dwellings are not detrimental to public health and morals, since such argument came too late in the history of the legislation, even if pertinent to the proceeding. Act June 25, 1938, § 1 et seq. and §§ 201-203, 52 Stat. 1186, 1188; D.C. Code 1929, T. 25, §§ 100, 109(1-5). *Keyes v. U.S.*, 119 F.2d 444, 1941 U.S. App. LEXIS 4650 (1941).

To deny persons entrance into Turnkey III program for home buyers because they could not meet monthly payments from certain portion of their income did not deny them anything that they were entitled to by statute or otherwise, and 22.5% minimum income requirement did not violate United States Housing Act or any concept embodied therein. United States Housing Act of 1937, §§ 1 et seq., 2(1)(B) as amended 42 U.S.C. §§ 1401 et seq., 1402(1)(B); National Housing Act, § 1 et seq., 12 U.S.C. § 1701 et seq. *McQueen v. National Capital Housing Authority*, 366 A.2d 786, 1976 D.C. App. LEXIS 425 (1976).

Where there was no statutory or constitutional right to homeownership through public housing program, National Capital Housing Authority could use 22.5% minimum income requirement as line-drawing procedure and was not required to consider each case on individual basis; such policy was not applica-

tion of an unconstitutional conclusive presumption. United States Housing Act of 1937, §§ 1 et seq., 2(1)(B) as amended 42 U.S.C. §§ 1401 et seq., 1402(1)(B); National Housing Act, § 1 et seq., 12 U.S.C. § 1701 et seq.; U.S. Const. Amend. 5. *McQueen v. National Capital Housing Authority*, 366 A.2d 786, 1976 D.C. App. LEXIS 425 (1976).

National Capital Housing Authority correctly declined to include food stamp benefit in computing income of applicant in determining whether she met 22.5% minimum income requirement for home ownership program. United States Housing Act of 1937, §§ 1 et seq., 2(1)(B) as amended 42 U.S.C. §§ 1401 et seq., 1402(1)(b); National Housing Act, § 1 et seq., 12 U.S.C. § 1701 et seq.; Food Stamp Act of 1964, § 7(c), 7 U.S.C. § 2016(c). *McQueen v. National Capital Housing Authority*, 366 A.2d 786, 1976 D.C. App. LEXIS 425 (1976).

Liability.

That legal title to public housing projects operated by National Housing Authority was in United States did not, under doctrine of sovereign immunity, preclude suit, which was not consented to by United States, and in which declaratory and injunctive relief was sought with respect to alleged failure to properly maintain and repair public housing facilities in District of Columbia. Housing Act of 1937, §§ 1, 1 et seq., 2(1, 2), 5(b), 15(1, 3, 4), 23 as amended 42 U.S.C. §§ 1401, 1401 et seq., 1402(1, 2), 1405(b), 1415(1, 3, 4), 1421b; D.C. Code §§ 5-103 et seq., 5-113. *Knox Hill Tenant Council v. Washington*, 448 F.2d 1045, 1971 U.S. App. LEXIS 12057 (C.A.D.C. 1971).

Action wherein individual tenants of public housing facilities in District of Columbia and associations of such tenants sought declaratory and injunctive relief with respect to alleged failure to properly maintain and repair such facilities, which were owned by United States,

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could not be maintained against District of Columbia officials, who were charged with enforcement of housing regulations, and who purportedly had enforced such regulations against National Housing Authority up to point of invoking criminal sanctions. Housing Act of 1937, §§ 1, 1 et seq., 2(1, 2), 5(b), 15(1, 3, 4), 23 as amended 42 U.S.C. §§ 1401, 1401 et seq., 1402(1, 2), 1405(b), 1415(1, 3, 4), 1421b; D.C. Code §§ 5-103 et seq., 5-113. *Knox Hill Tenant Council v. Washington*, 448 F.2d 1045, 1971 U.S. App. LEXIS 12057 (C.A.D.C. 1971).

Nature, extent and delegation of powers.

Under provision of amendment to the District of Columbia Alley Dwelling Act empowering the Alley Dwelling Authority to acquire sites for housing projects, the property to be acquired need not itself be unsafe or unsanitary and is not required to be acquired only in connection with a project including the demolition of unsafe or unsanitary dwellings. Act June 25, 1938, § 202, 52 Stat. 1188. *Keyes v. U.S.*, 119 F.2d 444, 1941 U.S. App. LEXIS 4650 (1941).

The fact that taking of owner's property for construction of dwellings for families and persons of low income had no relation to demolition of alley dwellings did not constitute defense to condemnation proceeding which was brought under authority of amendment to the District of Columbia Alley Dwelling Act empowering the Alley Dwelling Authority to acquire sites for housing projects in District of Columbia. Act June 25, 1938, § 1 et seq. and §§ 201-203, 52 Stat. 1186, 1188; United States Housing Act of 1937, § 1 et seq., 42 U.S.C. § 1401 et seq. *Keyes v. U.S.*, 119 F.2d 444, 1941 U.S. App. LEXIS 4650 (1941).

Under provision of amendment to the District of Columbia Alley Dwelling Act empower-

ing the Alley Dwelling Authority to acquire sites for housing projects in the District of Columbia, the Authority had power to condemn sites for low cost housing projects in addition to and wholly independent of provisions of the act relating to providing facilities to persons whose alley dwellings have been demolished. Act June 25, 1938, § 1 et seq. and §§ 201-203, 52 Stat. 1186, 1188; D.C. Code 1929, T. 25, §§ 100, 109(1-5). *Keyes v. U.S.*, 119 F.2d 444, 1941 U.S. App. LEXIS 4650 (1941).

In proceeding for condemnation of land for construction of dwellings for families and persons of low income in the District of Columbia brought under amendment to the District of Columbia Alley Dwelling Act empowering the Alley Dwelling Authority to acquire sites for housing projects in the District, return setting forth conclusion that conditions with respect to use of buildings in alleys as dwellings are not injurious to the public health, safety, morals, and public welfare was not sufficient to challenge the legislative declaration to the contrary. Act June 25, 1938, § 1 et seq. and §§ 201-203, 52 Stat. 1186, 1188; D.C. Code 1929, T. 25, §§ 100, 109(1-5). *Keyes v. U.S.*, 119 F.2d 444, 1941 U.S. App. LEXIS 4650 (1941).

Validity.

The District of Columbia Alley Dwelling Act, as amended, which provides for low rent housing projects and authorizes condemnation of land for that purpose, is valid and is not unconstitutional as authorizing condemnation of property for other than public uses. Act June 25, 1938, § 1 et seq., and §§ 201-203, 52 Stat. 1186, 1188; United States Housing Act of 1937, § 1 et seq., 42 U.S.C. § 1401 et seq., D.C. Code 1929, T. 25, §§ 100, 109 (1-5). *Keyes v. U.S.*, 119 F.2d 444, 1941 U.S. App. LEXIS 4650 (1941).

§ 6-102.03. Authority considered a public housing agency.

For the purposes of this subchapter, the Authority shall be considered a public housing agency within the meaning of, and to carry out the purposes of, the United States Housing Act of 1937 [42 U.S.C. § 1437 et seq.]; and as such, the Authority is empowered to borrow money or accept contributions, grants or other financial assistance from the United States Housing Authority for or in aid of any housing project in the District of Columbia, in accordance with the United States Housing Act of 1937 to take over or lease or manage any such housing project or undertaking constructed, owned, or operated by the United States Department of Housing and Urban Development and to those ends to comply with such conditions and enter into such mortgages, trust indentures, leases, or agreements as may be necessary, convenient, or desirable; provided, that the tax exemption of the property of the Authority shall be deemed a contribution by the District of Columbia in accordance with the local contributions requirements of § 1437 et seq. of Title 42, United States Code. It is the purpose and intent of this subchapter to authorize the Authority to do any and

all things necessary to secure the financial aid of the United States Department of Housing and Urban Development in the undertaking, construction, maintenance, or operation in the District of Columbia of any housing project by the Authority.

(June 12, 1934, ch. 465, title II, § 203; June 25, 1938, 52 Stat. 1188, ch. 691, § 5.)

Section references. — This section is referred to in §§ 1-202.02, 6-101.01, 6-101.02, 6-101.03, 6-101.05, 6-101.07, and 6-103.01.

Prior Codifications. — 1981 Ed., § 5-113. 1973 Ed., § 5-114.

References in text. — The United States Housing Act of 1937, referred to twice in the first sentence, is the Act of September 1, 1937, ch. 896.

The reference to § 1437 et seq. of Title 42 of the United States Code has been substituted for former references to § 1410(a) and § 1411(f) of Title 42, United States Code. Former §§ 1410(a) and 1411(f) of Title 42, United States Code, were omitted as superseded in the general revision of the United States Housing Act of 1937 by the Act of August 22, 1974, 88 Stat. 653, Pub. L. 93-383, § 201(a).

CASE NOTES

Liability.

That legal title to public housing projects operated by National Housing Authority was in United States did not, under doctrine of sovereign immunity, preclude suit, which was not consented to by United States, and in which declaratory and injunctive relief was sought with respect to alleged failure to properly maintain and repair public housing facilities in District of Columbia. Housing Act of 1937, §§ 1, 1 et seq., 2(1, 2), 5(b), 15(1, 3, 4), 23 as amended 42 U.S.C. §§ 1401, 1401 et seq., 1402(1, 2), 1405(b), 1415(1, 3, 4), 1421b; D.C. Code §§ 5-103 et seq., 5-113. *Knox Hill Tenant Council v. Washington*, 448 F.2d 1045, 1971 U.S. App. LEXIS 12057 (C.A.D.C. 1971).

Action wherein individual tenants of public

housing facilities in District of Columbia and associations of such tenants sought declaratory and injunctive relief with respect to alleged failure to properly maintain and repair such facilities, which were owned by United States, could not be maintained against District of Columbia officials, who were charged with enforcement of housing regulations, and who purportedly had enforced such regulations against National Housing Authority up to point of invoking criminal sanctions. Housing Act of 1937, §§ 1, 1 et seq., 2(1, 2), 5(b), 15(1, 3, 4), 23 as amended 42 U.S.C. §§ 1401, 1401 et seq., 1402(1, 2), 1405(b), 1415(1, 3, 4), 1421b; D.C. Code §§ 5-103 et seq., 5-113. *Knox Hill Tenant Council v. Washington*, 448 F.2d 1045, 1971 U.S. App. LEXIS 12057 (C.A.D.C. 1971).

§ 6-102.04. Housing projects; contributions by District.

For the purpose of aiding and cooperating in the planning, undertaking, construction, or operation of housing projects, the District of Columbia, or any department, instrumentality, or agency thereof, may, upon such terms, with or without consideration, as it may determine, as a contribution:

(1) Dedicate, sell, convey, or lease any needed property to the Authority;

(2) Cause parks, playgrounds, or recreational, community, educational, water, sewer, or drainage facilities, or any other works which it is otherwise empowered to undertake, to be furnished adjacent to or in connection with housing projects;

(3) Furnish, dedicate, close, pave, install, grade, regrade, plan, or replan streets, roads, roadways, alleys, sidewalks, or other places which it is otherwise empowered to undertake;

(4) Enter into agreements with the Authority respecting action to be taken pursuant to any of the powers granted by this subchapter and subchapter I of this chapter;

§ 6-102.05 HOUSING & BUILDING RESTRICTIONS & REGULATIONS

(5) Cause services of a character which it is otherwise empowered to furnish to be furnished to the Authority;

(6) Enter into agreements with the Authority respecting the elimination of unsafe, insanitary, or unfit dwellings; and

(7) Do any and all things necessary or convenient to aid and cooperate in the planning, undertaking, construction, or operation of such housing projects.

(June 12, 1934, ch. 465, title II, § 204; June 25, 1938, 52 Stat. 1188, ch. 691, § 5.)

Section references. — This section is referred to in §§ 1-202.02, 6-101.01, 6-101.02, 6-101.03, 6-101.05, 6-101.07, and 6-103.01.

Prior Codifications. — 1981 Ed., § 5-114.
1973 Ed., § 5-115.

§ 6-102.05. Loans by District authorized.

The Mayor of the District of Columbia is hereby authorized to lend to the Authority such amounts as may be necessary to enable the Authority to comply with the provisions of the United States Housing Act of 1937 [42 U.S.C. § 1437 et seq.] and appropriations for such purpose are hereby authorized out of the revenues of the District of Columbia, and the Authority is empowered to accept such loans.

(June 12, 1934, ch. 465, title II, § 205; June 25, 1938, 52 Stat. 1189, ch. 691, § 5.)

Section references. — This section is referred to in §§ 1-202.02, 6-101.01, 6-101.02, 6-101.03, 6-101.05, 6-101.07, and 6-103.01.

Prior Codifications. — 1981 Ed., § 5-115.
1973 Ed., § 5-116.

References in text. — The United States Housing Act of 1937, referred to in this section, is the Act of September 1, 1937, ch. 896.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorga-

nization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

Subchapter III. Low-Rent Public Housing.

§ 6-103.01. Low-rent public housing projects.

All projects now operated and maintained by the National Capital Housing Authority pursuant to subchapter I of this chapter are deemed to be low-rent housing projects and may be consolidated, pursuant to § 1437 et seq. of Title 42, United States Code, into any contract for annual contributions covering projects maintained and operated pursuant to subchapter II of this chapter.

(Aug. 1, 1968, 82 Stat. 607, Pub. L. 90-448, title XVII, § 1711.)

Prior Codifications. — 1981 Ed., § 5-116.
1973 Ed., § 5-117.

References in text. — The reference to
§ 1437 et seq. of Title 42, United States Code
has been substituted for “§ 1415(6) of Title 42,

United States Code.” Former § 1415(6) of Title
42, United States Code, was omitted as super-
seded in the general revision of the United
States Housing Act of 1937 by the Act of August
22, 1974, 88 Stat. 653, Pub. L. 93-383.

CHAPTER 2. DISTRICT OF COLUMBIA HOUSING AUTHORITY.

Subchapter I. District of Columbia Housing Authority, 1999

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Subchapter II. District of Columbia Housing Authority, 1994 [Repealed]

6-251 to 6-263. [Repealed].

Subchapter I. District of Columbia Housing Authority, 1999.

§ 6-201. Definitions.

For the purposes of this chapter, the term:

- (1) "Act" means this chapter.
- (2) "Advisory Committee" means the committee, established in § 6-212, that advises the Mayor and the Authority.
- (3) "Apprehension" means the act of seizing or arresting a suspect.
- (3A) "Area median income" means:
 - (A) For a household of 4 persons, the area median income for a household of 4 persons in the Washington Metropolitan Statistical Area as set forth in the periodic calculation provided by the United States Department of Housing and Urban Development;
 - (B) For a household of 3 persons, 90% of the area median income for a household of 4 persons;
 - (C) For a household of 2 persons, 80% of the area median income for a household of 4 persons;
 - (D) For a household of one person, 70% of the area median income for a household of 4 persons;
 - (E) For a household of more than 4 persons, the area median income for a household of 4 persons, increased by 10% of the area median income for a family of 4 persons for each household member exceeding 4 persons (e.g., the area median income for a family of 5 shall be 110% of the area median income for a family of 4; the area median income for a household of 6 shall be 120% of the area median income for a family of 4).

(4) “Arrest” means the act of seizing and charging a suspect with the commission of a crime or violation.

(5) “Authority” means the District of Columbia Housing Authority.

(6) “Board” means the Board of Commissioners of the District of Columbia Housing Authority.

(7) “Book” means to enter an official charge against an arrested suspect on a police register.

(7A) “Capper/Carrollsborg Public Improvements” means the infrastructure, including streets, sidewalks, walkways, streetscapes, curbs, gutters, and gas, electric, and water utility lines, and other publicly-owned infrastructure, and the relocation, construction, and redevelopment of certain public facilities located within or serving the Capper/Carrollsborg PILOT Area designated pursuant to § 47-4611.

(8) “Central labor council” means the regional umbrella federation of all local AFL-CIO unions, including most of the private, federal, and public sector unions in the District of Columbia.

(9) “Chief Financial Officer” or “CFO” means the Chief Financial Officer of the District as established by § 1-204.24a(a).

(10) “City-Wide Resident Council Advisory Board” means the group consisting of the President of each Resident Council and not more than 15 members selected by the residents.

(11) “Council” means the Council of the District of Columbia.

(12) “Commissioner” means a member of the Board.

(13) “Day” or “Days” means a calendar day or days.

(13A) “Development costs” means all costs and expenses incurred by or on behalf of the District of Columbia or the Authority relating to the development, redevelopment, purchase, acquisition, protection, financing, construction, expansion, reconstruction, restoration, rehabilitation, renovation, repair, furnishing, equipping, and operating of the Capper/Carrollsborg Public Improvements, including:

(A) The costs of demolishing or removing buildings or structures on, and site preparation of, land acquired or used for, or in connection with, the Capper/Carrollsborg Public Improvements;

(B) Costs of relocation, construction, and redevelopment of the Capper/Carrollsborg Public Improvements;

(C) Expenses incurred for utility lines, structures, or equipment charges;

(D) Interest prior to, and during, construction and for a period as may be necessary for the operation of the Capper/Carrollsborg Public Improvements;

(E) Provisions for reserves for principal and interest, capitalized interest, and extraordinary repairs and replacements;

(F) Expenses incurred for architectural, engineering, energy efficiency technology, design and consulting, financial, and legal services;

(G) Fees for letters of credit, bond insurance, debt service reserve insurance, surety bonds, or similar credit or liquidity enhancement instruments;

(H) Costs and expenses associated with the conduct and preparation of specification and feasibility studies, plans, surveys, historic structure reports, and estimates of expenses and revenues;

(I) Expenses necessary or incident to the District of Columbia or the Authority issuing bonds, notes, or other obligations to finance the acquisition, construction, or redevelopment of the Capper/Carrollsbury Public Improvements and determining the feasibility and the fiscal impact of financing the acquisition, construction, or redevelopment of the Capper/Carrollsbury Public Improvements; and

(J) The provision of a proper allowance for contingencies and initial working capital.

(14) "District" means the District of Columbia.

(15) "DCHAPD" means the District of Columbia Housing Authority Police Department, the duly constituted police department of the District of Columbia Housing Authority established under § 6-223.

(16) "District government" means the Government of the District of Columbia.

(16A) "Domestic partner" shall have the same meaning as provided in § 32-701(3).

(17) "DPAH" means the former Department of Public and Assisted Housing of the District.

(18) "Execute" means to carry out or perform all necessary formalities to effect or enforce the directions of a court order, court decree, or warrant.

(19) "Executive Director" means the Executive Director of the Authority.

(19A) "Extremely-low income" means an individual or family whose gross income does not exceed 30% of the area median income.

(19B) "For-profit activities" means ancillary activities to the main activities of the District of Columbia Housing Authority, such as retail, commercial office, manufacturing, or recreational real property development activities undertaken by for-profit entities intended to support or contribute to the financial viability of Housing Properties, but does not include residential real property development activities.

(20) "Fund" means the District of Columbia Housing Authority Fund established by § 6-202.

(21) "General Counsel" means the Officer employed as the general counsel of the Authority.

(22) "General Population Housing" means a housing community that includes or may include non-elderly singles, families, residents with disabilities, and elderly residents.

(23) "Housing Act of 1937" means the United States Housing Act of 1937, approved September 1, 1937 (50 Stat. 888; 42 U.S.C. § 1401 et seq.).

(23A) "Housing Choice Voucher Program" means the federal housing program authorized by section 8 of the United States Housing Act of 1937, approved September 1, 1937 (50 Stat. 888; 42 U.S.C. § 1437(f) et seq.), and administered in the District of Columbia by the District of Columbia Housing Authority.

(24) "Housing Finance Agency" or "HFA" means the District of Columbia Housing Finance Agency established by the Housing Finance Agency Act.

(25) "Housing Finance Agency Act" means Chapter 27 of Title 42 of the D.C. Official Code.

(26) "Housing Property" or "Housing Properties" means housing and related facilities for persons of low- and moderate-income, including housing and related facilities for the elderly, and housing and related facilities for people with disabilities; and housing, community facilities, and other properties intended to support or contribute to the financial viability of such housing and related facilities: (A) owned, operated, or managed by the Authority, or (B) the development or administration of which is assisted by the Authority.

(27) "HUD" means the United States Department of Housing and Urban Development.

(28) "Low-income families" or "persons of low-income" means families or persons whose incomes do not exceed 80% of the median area income in and for the Washington Metropolitan Area or shall be such other meaning as shall be established by HUD in the Housing Act of 1937.

(29) "Mayor" means the Mayor of the District of Columbia.

(30) "Members of the DCHAPD" means those persons who are employed as police officers and special police officers by the Authority.

(31) "Metropolitan Police Department" means the District of Columbia Metropolitan Police Department or Metropolitan Police Force.

(32) "Mixed-Income Community" means a housing development which includes rental or homeownership units made available to persons or families of varying incomes and which includes Public-Housing-Assisted Units.

(33) "Mixed Population Housing" means a housing community that includes elderly and non-elderly residents with disabilities.

(34) "Moderate-income families" or "persons of moderate-income" means families or persons whose incomes do not exceed 115% of the median area income in and for the Washington Metropolitan Area, or shall have such other meaning as may from time to time be established by HUD in the Housing Act of 1937.

(35) "Obligations" means revenue bonds, notes, mortgages, or other obligations (including refunding bonds, notes, or other obligations) to finance or refinance the undertakings of the Authority pursuant to this chapter.

(36) "Officer" means an Authority employee who is in a decision-making or supervisory position.

(36A) "Partnership Program for Affordable Housing" means the District of Columbia Housing Authority Program described in Chapter 93 of Title 14 of the District of Columbia Municipal Regulations.

(37) "Personnel Act" means Chapter 6 of Title 1 of the D.C. Official Code.

(38) "Power of arrest" means the ability to seize and arrest an alleged or suspected offender to answer for a crime.

(39) "Procurement Act" means Chapter 3 of Title 2 of the D.C. Official Code.

(39A) "Project-based voucher assistance" means funds attached to a particular building, or set of buildings, owned and operated by a private or nonprofit housing provider.

(40) "Public Employee Relations Board" or "PERB" means the District of Columbia Public Employee Relations Board established under § 1-605.01.

(41) “Public-Housing-Assisted Unit” means any unit that is developed, operated, or maintained in whole or in part with federally-appropriated housing funds, including capital or revitalization funds and operating subsidy funds.

(42) “Receiver” means the receiver appointed to oversee the District of Columbia Housing Authority, operating pursuant to the order entered in *Pearson v. Kelly*, 92-CA-14030 (Sup. Ct. D.C. May 19, 1995).

(42A) “Rent Supplement Program” means the program established under § 6-226 to provide housing assistance to extremely low-income District residents, including those who are homeless and those in need of supportive services, such as elderly individuals or those with disabilities.

(43) “Resident” means any individual who resides in a dwelling unit in a Public-Housing Assisted Unit as a signatory on a lease for said dwelling unit; is identified on the lease as a member of the family of the individual who is the signatory on the lease; or is a resident as defined in the Housing Act of 1937.

(43A) “Sponsor-based voucher assistance” means funds allocated under contract to a particular private or nonprofit housing provider to subsidize the rent, in units owned and operated by the provider, for a maximum number of households established by contract.

(43B) “Supportive housing” means housing provided in connection with voluntary services designed primarily to help tenants maintain housing, including coordination or case management, physical and mental health, substance use management and recovery support, job training, literacy and education, youth and children’s programs, and money management.

(44) “Weapon” means an instrument or device for offensive or defensive combat, or anything used, or designed to be used, for the purpose of harming, threatening, damaging, or injuring a person or property.

(May 9, 2000, D.C. Law 13-105, § 2, 47 DCR 1325; Apr. 12, 2005, D.C. Law 15-337, § 2(a), 52 DCR 2278; Mar. 2, 2007, D.C. Law 16-192, § 2142(a), 53 DCR 6899; Apr. 24, 2007, D.C. Law 16-305, § 19(a), 53 DCR 6198; Mar. 20, 2008, D.C. Law 17-118, § 102(a), 55 DCR 1461; Sept. 12, 2008, D.C. Law 17-231, § 15(a), 55 DCR 6758; Mar. 25, 2009, D.C. Law 17-353, § 302, 56 DCR 1117.)

Effect of amendments. — D.C. Law 15-337 added par. (19A).

D.C. Law 16-192 added pars. (3A), (19A), (23A), (36A), (39A), (42A), (43A), and (43B).

D.C. Law 16-305 substituted “residents with disabilities” for “disabled residents”, throughout the section.

D.C. Law 17-118 added pars. (7A) and (13A).

D.C. Law 17-231 added par. (16A).

D.C. Law 17-353 validated previously made technical corrections in the designation of pars. (19A) and (19B).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(a) of District of Columbia Housing Authority Revitalization Projects Temporary

Amendment Act of 2004(D.C. Law 15-260, March 17, 2005, law notification 52 DCR 4372).

For temporary (225 day) amendment of section, see § 2 of Local Rent Supplement Program Temporary Amendment Act of 2008 (D.C. Law 17-164, May 13, 2008, law notification 55 DCR 6252).

Section 2(a) of D.C. Law 17-382, in par. (43A), substituted “units owned, leased, or operated” for “units owned and operated”.

Section 4(a) of D.C. Law 17-382 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90-day) addition of §§ 5-151 to 5-172 1981 Ed., see §§ 2 to 23 of the District of Columbia

Housing Authority Emergency Act of 1999 (D.C. Act 13-259, February 9, 2000, 47 DCR 1129).

For temporary (90-day) addition of §§ 5-151 to 5-172 1981 Ed., see §§ 2 to 23 of the District of Columbia Housing Authority Congressional Review Emergency Act of 2000 (D.C. Act 13-346, June 5, 2000, 47 DCR 4980).

For temporary (90 day) amendment of section, see § 2(a) of District of Columbia Housing Authority Revitalization Projects Emergency Amendment Act of 2004 (D.C. Act 15-552, October 26, 2004, 51 DCR 10356).

For temporary (90 day) amendment of section, see § 2(a) of District of Columbia Housing Authority Revitalization Projects Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-36, February 17, 2005, 52 DCR 3026).

For temporary (90 day) amendment of section, see § 2142(a) of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) amendment of section, see § 2142(a) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) amendment of section, see § 2142(a) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

For temporary (90 day) amendment of section, see § 2 of Local Rent Supplement Program Emergency Amendment Act of 2008 (D.C. Act 17-306, February 22, 2008, 55 DCR 2518).

For temporary (90 day) amendment of section, see § 102(a) of Arthur Capper/Carrollsborg Public Improvement Revenue Bonds Technical Correction Emergency Act of 2008 (D.C. Act 17-318, March 19, 2008, 55 DCR 3418).

For temporary (90 day) amendment of section, see § 2(a) of Local Rent Supplement Program Second Emergency Amendment Act of 2008 (D.C. Act 17-684, January 12, 2009, 56 DCR 1111).

Legislative history of Law 13-105. — Law 13-105, the “District of Columbia Housing Authority Act of 1999,” was introduced in Council and assigned Bill No. 13-169, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 7, 1999, and December 21, 1999, respectively. Signed by

the Mayor on January 18, 2000, it was assigned Act No. 13-254 and transmitted to both Houses of Congress for its review. D.C. Law 13-105 became effective on May 9, 2000.

Legislative history of Law 15-337. — Law 15-337, the “District of Columbia Housing Authority Amendment Act of 2004,” was introduced in Council and assigned Bill No. 15-1076 which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 7, 2004, and December 21, 2004, respectively. Signed by the Mayor on January 19, 2005, it was assigned Act No. 15-752 and transmitted to both Houses of Congress for its review. D.C. Law 15-337 became effective on April 12, 2005.

Legislative history of Law 16-192. — Law 16-192, the “Fiscal Year Budget Support Act of 2006,” was introduced in Council and assigned Bill No. 16-679, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 9, 2006, and June 6, 2006, respectively. Signed by the Mayor on August 8, 2006, it was assigned Act No. 16-476 and transmitted to both Houses of Congress for its review. D.C. Law 16-192 became effective on March 2, 2007.

Legislative history of Law 16-305. — Law 16-305, the “People First Respectful Language Modernization Act of 2006,” was introduced in Council and assigned Bill No. 16-664, which was referred to Committee on the Whole. The Bill was adopted on first and second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 17, 2006, it was assigned Act No. 16-437 and transmitted to both Houses of Congress for its review. D.C. Law 16-305 became effective on April 24, 2007.

Legislative history of Law 17-118. — Law 17-118, the “Arthur Capper/Carrollsborg Public Improvements Revenue Bonds Approval Amendment Act of 2008,” was introduced in Council and assigned Bill No. 17-292 which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on December 11, 2007, and January 8, 2008, respectively. Signed by the Mayor on January 24, 2008, it was assigned Act No. 17-262 and transmitted to both Houses of Congress for its review. D.C. Law 17-118 became effective on March 20,

Short title. — Short title: Section 2141 of D.C. Law 16-192 provided that subtitle L of title II of the act may be cited as the “D.C. Housing Authority Rent Supplement Act of 2006”.

§ 6-202. Establishment of District of Columbia Housing Authority; purposes of Authority; Fund.

(a) There is established, as an independent authority of the District govern-

ment, the District of Columbia Housing Authority. The Authority shall be a corporate body, intended, created, and empowered to effectuate the purposes stated in this chapter, and shall have a legal existence separate from the District government. The Authority shall be the successor in interest to the housing authority created by subchapter II of Chapter 2 of Title 6 [repealed]. All real and personal property, assets, records, and obligations, and all unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the powers, duties, functions, operations, and administration of the DPAH and of the authority created under subchapter II of Chapter 2 of Title 6 shall become the property of the Authority on May 9, 2000, without further action.

(b) The Authority shall govern public housing and implement the Housing Act of 1937 in the District, and shall be responsible for providing decent, safe, and sanitary dwellings, and related facilities, for persons and families of low-and moderate-income in the District.

(c) There is established the District of Columbia Housing Authority Fund, which shall be a proprietary fund in the nature of an enterprise fund as classified under § 47-373 and administered by the Authority in accordance with generally accepted accounting principles. All revenues, rents, proceeds, and monies, from whatever source derived, that are collected or received by the Authority shall be credited to the Fund and shall not at any time be transferred to, lapse into, or be commingled with the General Fund of the District or any other fund or account of the District; provided, that funds may be paid out of the Fund to the District Treasurer to pay for goods, services, or property, or other things of value, if any, purchased by the Authority from the District.

(d) Notwithstanding subsection (c) of this section, or any other provision of this chapter, any funds provided to the Authority from the local revenues of the District shall be held separate and apart from the Fund and shall be held and expended for the use and benefit of the District for the purposes and uses provided in the approved budget and financial plan. The Authority shall expend, and account for the expenditure of, funds in the same manner as all other agencies of the District government. At the end of each fiscal year, the unexpended amount of such funds shall revert to the fund balance of the General Fund of the District of Columbia.

(May 9, 2000, D.C. Law 13-105, § 3, 47 DCR 1325; Oct. 20, 2005, D.C. Law 16-33, § 2022, 52 DCR 7503.)

Effect of amendments. — D.C. Law 16-33 added subsec. (d).

Emergency legislation. — For temporary (90-day) addition of section, see notes following § 6-201.

For temporary (90 day) amendment of section, see § 2022 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 13-105. — For Law 13-105, see notes following § 6-201.

Legislative history of Law 16-33. — Law

16-33, the “Fiscal Year 2006 Budget Support Act of 2005”, was introduced in Council and assigned Bill No. 16-200 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 10, 2005, and June 21, 2005, respectively. Signed by the Mayor on July 26, 2005, it was assigned Act No. 16-166 and transmitted to both Houses of Congress for its review. D.C. Law 16-33 became effective on October 20, 2005.

Short title. — Short title of subtitle C of title

II of Law 16-33: Section 2021 of D.C. Law 16-33 provided that subtitle C of title II of the act may

be cited as the District Support for Public Housing Amendment Act of 2005.

CASE NOTES

ANALYSIS

Discretionary function immunity.

Parties.

Responsibility to provide safe dwellings.

Discretionary function immunity.

Decision by District of Columbia Housing Authority (DCHA) to keep elevators at public housing facility running rather than replace them, because DCHA intended to replace the entire facility and determined it would not spend money on capital improvements, did not provide DCHA with discretionary-function immunity in negligence action brought by resident for personal injuries he suffered when he fell while stepping off a malfunctioning elevator; though DCHA had decided to replace the facility, DCHA did not make a policy decision barring repairs. D.C. Hous. Auth. v. Pinkney, 970 A.2d 854, 2009 D.C. App. LEXIS 77 (2009).

Parties.

Even if under District of Columbia law informal hearing decision by District of Columbia Housing Authority (DCHA) hearing officer that DCHA wrongfully terminated plaintiff from Housing Choice Voucher Program (HCVP) following police raid was a final judgment, it was not entitled to preclusive effect in plaintiff's action against the District of Columbia to be reinstated to HCVP; as DCHA was an independent agency legally distinct from the District government, the District was not a party to the

proceedings before the hearing officer, and the plaintiffs' claims against the District arose out of their allegation that the raid was conducted in retaliation for whistleblower activity, while issue before hearing officer was whether there was sufficient evidence that plaintiff had engaged in illegal activity at her residence, disqualifying her from the HCVP. Hoffman v. District of Columbia, 730 F.Supp.2d 109, 2010 U.S. Dist. LEXIS 81461 (2010).

Responsibility to provide safe dwellings.

Maintenance decisions, made by District of Columbia Housing Authority (DCHA) regarding malfunctioning elevator in public housing facility, were ministerial activities that were not immune from tort liability, when resident brought negligence action for personal injuries he suffered when he fell while stepping off the malfunctioning elevator; though decisions made by DCHA regarding the elevator were in part based on financial reasons and DCHA had made a decision to replace the facility, DCHA had a statutory responsibility to provide decent and safe dwellings for persons residing in its facilities, and if DCHA could not afford to replace the elevator and could not make it safe through less costly measures, DCHA had the options to shut the elevator down and inform residents that the elevator was out of order, or relocate residents in the facility. D.C. Hous. Auth. v. Pinkney, 970 A.2d 854, 2009 D.C. App. LEXIS 77 (2009).

§ 6-203. General powers of the Authority.

In order that the Authority may fulfill its purposes to the fullest extent possible, it is hereby empowered and authorized to:

(1) Acquire real and personal property by purchase, lease, transfer, gift, exchange, or otherwise, or by power of eminent domain as herein conferred;

(2) Hold, own, operate, lease, and manage: real property and the improvements thereon; personal property; funds; accounts; and other assets related to the Authority's purposes;

(3) Establish rules and regulations governing entrance onto Housing Properties; to charge unauthorized persons on the grounds of Housing Properties with unauthorized entry; and to issue orders barring unauthorized persons from the grounds of Housing Properties;

(4) Lease, sell, pledge, encumber, mortgage, convey, dispose of, or otherwise transfer: rights and interests in real property and the improvements thereon; personal property; funds; accounts; and other assets related to the Authority's purposes;

(5) Construct, reconstruct, improve, repair, rehabilitate, revitalize, oper-

ate, lease, and maintain Housing Properties, including assisted-living developments; Mixed-Income Communities; Mixed-Population Housing; home ownership; condominium or cooperative units; family rental developments; housing for the elderly and residents with disabilities; special needs housing and other improvements related to or supporting any or all of the foregoing; and to contract with others for the performance of such activities;

(6) Demolish unsafe, unsound, unsanitary, or obsolete Housing Properties or other structures in connection with the fulfillment of the purposes of this chapter and in accordance with applicable federal laws and regulations; and to contract with others to perform such demolition;

(7) Lease, operate, manage, and maintain Housing Properties in furtherance of its purposes;

(8) Issue Obligations pursuant to the provisions of this chapter;

(9) Apply for, accept, receive, and utilize funds from public and private sources in the form of gifts, grants, or loans;

(10) Provide grants, guarantees, and loans in connection with the development, construction, reconstruction, repair, improvement, operation, leasing, purchase, or sale of Housing Properties;

(11) Sue and be sued in its own name;

(12) Adopt and implement administrative procedures which shall be in compliance with subchapters I and II of Chapter 5 of Title 2, and all other applicable laws and regulations;

(13) Adopt and administer personnel policies and procedures, including grievance procedures, subject to collective bargaining for bargaining unit employees;

(14) Employ an Executive Director, a financial officer, and such other Officers, agents, and employees as it may require;

(15) Employ its own General Counsel, and to employ special counsel from time to time as needed;

(16) Adopt and administer its own procurement and contracting policies and procedures in accordance with § 6-219;

(17) Enter into contracts, joint ventures, or other cooperative arrangements with the District, the United States of America, other public entities, or private entities in furtherance of its purposes; provided, that:

(A) Prior to the Authority contracting out to a private entity a service or activity performed by employees of the Authority, through established standards developed by rules and regulations, the Authority shall establish that the contracting out will achieve increased efficiencies and cost savings to the Authority over the duration of the contract of at least 5%;

(B) The Authority shall establish procedures for permitting employees to submit bids or proposals to contract with the Authority as appropriate and in accordance with procurement and contracting policies and procedures established under § 6-219;

(C) Any contractor who is awarded a contract that displaces Authority employees shall offer to any displaced employee a right-of-first refusal to employment by the contractor, in a comparable available position for which the employee is qualified, for at least a 6-month period during which the employee shall not be discharged without cause; and

(D) If the employee's performance during the 6-month period required by subparagraph (C) of this paragraph is satisfactory, the contractor shall offer the employee continued employment under the terms and conditions established by the contractor;

(18) Negotiate collective bargaining agreements with labor organizations;

(19) Establish nonprofit and for-profit corporations, partnerships, limited liability companies, and other entities to act in furtherance of its purposes;

(20) Create a distinctive design and numbering system for identification of Authority motor vehicles and other property, including a DCHAPD license tag which shall be affixed to the license plates of the DCHAPD vehicles at the Authority's expense;

(21) Develop, establish, adopt, and administer a personnel system, and publish rules and regulations setting forth minimum standards for all employees, including appointments, promotions, discipline, grievance, separation, compensation, employee disability and death benefits, leave, retirement, health and life insurance, and preferences. With regard to Authority employees who are covered by a collective bargaining agreement, all such personnel rules, regulations, and standards shall only be applicable to such employees by agreement between their collective bargaining representative and the Authority;

(22) Exercise any power customarily possessed by public enterprises or private corporations performing similar functions, and to undertake any and all other activities as may be reasonably necessary or appropriate in connection with the furtherance and accomplishment of the Authority's mission, that are not in conflict with the laws of the District; and

(23) To petition the Mayor to acquire property through eminent domain in accordance with D.C. Official Code §§ 16-1311 to 16-1321.

(May 9, 2000, D.C. Law 13-105, § 4, 47 DCR 1325; Apr. 24, 2007, D.C. Law 16-305, § 19(b), 53 DCR 6198.)

Effect of amendments. — D.C. Law 16-305, in par. (5), substituted "residents with disabilities" for "disabled".

Emergency legislation. — For temporary (90-day) addition of section, see notes following § 6-201.

Legislative history of Law 13-105. — For Law 13-105, see notes following § 6-201.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 6-201.

Editor's notes. — Section 2 of D.C. Law 17-364 provided:

"Sec. 2. Housing waiting list elimination plan.

"(a) Within 90 days of the effective date of this act, the Mayor shall develop and submit to the Council for approval a comprehensive plan to eliminate the District of Columbia Housing Authority's current waiting list of individuals

seeking housing choice vouchers and placement in public housing by January 1, 2011.

"(b) The plan shall identify local funding for, but not limited to, the local rent supplement program and the production of new public housing units to create new housing options for the over 25,000 individuals currently on the waiting list.

"(c) The plan shall also identify a strategy for the District to pursue additional federal, private, and other funding for this purpose.

"(d) The plan shall identify a strategy and make recommendations to prevent the waiting list from reaching current levels in the future.

"(e) In developing the plan, the Mayor shall consult and collaborate with appropriate public and private agencies, institutions, and organizations in the District of Columbia."

CASE NOTES

ANALYSIS

Discretionary function immunity.
Responsibility to provide safe dwellings.

Discretionary function immunity.

Decision by District of Columbia Housing Authority (DCHA) to keep elevators at public housing facility running rather than replace them, because DCHA intended to replace the entire facility and determined it would not spend money on capital improvements, did not provide DCHA with discretionary-function immunity in negligence action brought by resident for personal injuries he suffered when he fell while stepping off a malfunctioning elevator; though DCHA had decided to replace the facility, DCHA did not make a policy decision barring repairs. *D.C. Hous. Auth. v. Pinkney*, 970 A.2d 854, 2009 D.C. App. LEXIS 77 (2009).

Responsibility to provide safe dwellings.

Maintenance decisions, made by District of

Columbia Housing Authority (DCHA) regarding malfunctioning elevator in public housing facility, were ministerial activities that were not immune from tort liability, when resident brought negligence action for personal injuries he suffered when he fell while stepping off the malfunctioning elevator; though decisions made by DCHA regarding the elevator were in part based on financial reasons and DCHA had made a decision to replace the facility, DCHA had a statutory responsibility to provide decent and safe dwellings for persons residing in its facilities, and if DCHA could not afford to replace the elevator and could not make it safe through less costly measures, DCHA had the options to shut the elevator down and inform residents that the elevator was out of order, or relocate residents in the facility. *D.C. Hous. Auth. v. Pinkney*, 970 A.2d 854, 2009 D.C. App. LEXIS 77 (2009).

§ 6-204. Tax exemption.

(a) All assets and income of the Authority and all Housing Properties (whether or not owned or operated by the Authority) shall be exempt from District taxation, subject to the conditions contained in subsection (b) of this section and the approval required by subsection (c) of this section. Absent an agreement with the Authority approved by the Council, for-profit activities shall not be exempt from District taxation.

(b) The Authority is empowered to negotiate tax exemption agreements concerning for-profit activities. These tax exemption agreements shall be limited to full or partial relief from the following District taxes: property, income, and sales. The maximum duration of any tax exemption agreement under this section shall be 5 years.

(c) Before a tax exemption agreement involving for-profit activities can become effective, legislation for this purpose shall be submitted to the Council for approval by act.

(May 9, 2000, D.C. Law 13-105, § 5, 47 DCR 1325; Apr. 12, 2005, D.C. Law 15-337, § 2(b), 52 DCR 2278.)

Effect of amendments. — D.C. Law 15-337, in subsecs. (a) and (b), substituted “for-profit activities” for “for-profit activities involving Housing Properties”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(b) of District of Columbia Housing Authority Revitalization Projects Temporary Amendment Act of 2004 (D.C. Law 15-260, March 17, 2005, law notification 52 DCR 4372).

Emergency legislation. — For temporary (90-day) addition of section, see notes following § 6-201.

For temporary (90 day) amendment of section, see § 2(b) of District of Columbia Housing Authority Revitalization Projects Emergency Amendment Act of 2004 (D.C. Act 15-552, October 26, 2004, 51 DCR 10356).

For temporary (90 day) amendment of section, see § 2(b) of District of Columbia Housing Authority Revitalization Projects Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-36, February 17, 2005, 52 DCR 3026).

Legislative history of Law 13-105. — For Law 13-105, see notes following § 6-201.

Legislative history of Law 15-337. — For Law 15-337, see notes following § 6-201.

§ 6-205. Limitation on actions against Authority.

(a) An action may not be maintained against the Authority for damages to property or personal injuries unless, within 6 months after the date on which the damage or injury was sustained, the claimant, or the claimant's agent or attorney, gives notice in writing to the Executive Director of the approximate time, place, cause, and circumstances of the damage or injury. Any claim of which the Authority is not given notice in accordance with this provision shall be forever waived and barred.

(b) Notwithstanding any provision of law to the contrary, the Authority shall be entitled to the same number of days to which the District is entitled, as the same may change from time to time, for answering any complaint or other process served upon it.

(c) Execution or other judicial process shall not issue against real property owned in whole or in part by the Authority, nor shall any judgment against the Authority be a charge or lien upon real property owned in whole or in part by the Authority. This subsection shall not apply to or limit the right to foreclose or otherwise enforce any mortgage on property of the Authority or the right to pursue any remedies for the enforcement of any security interest or lien given by the Authority on its rents, fees, and revenues.

(d) The District government, its officers, departments, agencies, or other units of government shall not be liable for damages for any action, or failure to take action, by the Authority or its officers, employees, or agents. Notwithstanding any other provision of this chapter, the District government shall not be liable for any note or other obligation (including any mortgage or other agreement securing the indebtedness) entered into by the Authority in the acquisition, financing, or refinancing of the indebtedness of, real or personal, property.

(May 9, 2000, D.C. Law 13-105, § 6, 47 DCR 1325.)

Emergency legislation. — For temporary (90-day) addition of section, see notes following § 6-201.

Legislative history of Law 13-105. — For Law 13-105, see notes following § 6-201.

CASE NOTES

ANALYSIS

Declaratory judgments.
Notice requirement.
Review.

Declaratory judgments.

Tenant's claim for declaratory judgment invalidating Housing Authority's assessment against rental account following fatal fire was not subject to prior compliance with notice of claim statute, since the action did not allege damage to property or personal injury, but was a defense to the Authority's administrative

claim. *Gaskins v. D.C. Hous. Auth.*, 904 A.2d 360, 2006 D.C. App. LEXIS 442 (2006).

Notice requirement.

Mother's allegations were sufficient to plead that she provided six-month statutory notice to the District of Columbia Housing Authority of injuries she and her four children suffered for Authority's failure to transfer them to a new apartment, as required for her common law tort claims against Authority under District of Columbia law; mother alleged that her apartment lacked heat control and was infested with ro-

dents, that her transfer request was denied, that a disabled child suffered seizure-like symptoms from excessive heat, that rodents gnawed on child's feeding tubes, that she made a number of complaints, that she and her children were exposed to these conditions until transferred two years later, that the Authority exterminated thirteen rodents day before relocation, and that she served notice on Authority's executive director four months after transfer. *Morton v. D.C. Hous. Auth.*, 720 F.Supp.2d 1, 2010 U.S. Dist. LEXIS 65341 (2010).

With respect to cause element for notice of claim against Housing Authority, notice is sufficient if it recites facts from which it could be reasonably anticipated that a claim against the District of Columbia might arise; at a minimum, that notice must describe the injuring event with sufficient detail to reveal, in itself, a basis for the Authority's potential liability. *Gaskins v. D.C. Hous. Auth.*, 904 A.2d 360, 2006 D.C. App. LEXIS 442 (2006).

Notice that tenant gave to Housing Authority

following fatal apartment fire failed to satisfy statutory requirement to specify cause of damage or injury in notice of claim, and, thus, tenant failed to satisfy prerequisite to claim for wrongful death of granddaughter; the tenant had filed administrative complaint to challenge damage assessment against rental account, she attached to it fire investigation and police reports mentioning granddaughter's death, her attorney referred to the fatality in request to see agency files and inspect premises, but these documents did not apprise the Authority of potential claim that it was responsible for the child's death through negligence. *Gaskins v. D.C. Hous. Auth.*, 904 A.2d 360, 2006 D.C. App. LEXIS 442 (2006).

Review.

Questions of compliance with statutory requirement to give notice of claim to District of Columbia Housing Authority are reviewed de novo. *Gaskins v. D.C. Hous. Auth.*, 904 A.2d 360, 2006 D.C. App. LEXIS 442 (2006).

§ 6-206. Representation.

The Authority shall be represented by its General Counsel and other attorneys, as necessary, and, notwithstanding any other provision of law, shall not be subject to the oversight of the Corporation Counsel for the District government.

(May 9, 2000, D.C. Law 13-105, § 7, 47 DCR 1325.)

Emergency legislation. — For temporary (90-day) addition of section, see notes following § 6-201.

Legislative history of Law 13-105. — For Law 13-105, see notes following § 6-201.

§ 6-207. Office of Audit and Compliance.

The Authority shall establish an Office of Audit and Compliance. The Office of Audit and Compliance shall conduct independent fiscal and management audits of the Authority's operations; other special audits, examinations, or other assignments; and civil and criminal investigations. The Office of Audit and Compliance shall comply with all federal requirements with respect to audits and investigations of federal programs and shall be the Authority's liaison for the General Accounting Office and the Office of the Inspector General of HUD.

(May 9, 2000, D.C. Law 13-105, § 8, 47 DCR 1325.)

Emergency legislation. — For temporary (90-day) addition of section, see notes following § 6-201.

Legislative history of Law 13-105. — For Law 13-105, see notes following § 6-201.

§ 6-208. Exemption from court fees and costs.

(a) The Authority and any Officer acting therefor shall not be required to pay court costs, filing fees, or any other fees in any court in and for the District.

(b) Neither the Authority nor any Officer acting in his or her official capacity for the Authority shall be required to give a bond or enter into an undertaking to perfect an appeal or to obtain an injunction or other writ, process, or order in or of any court in the District for which a bond or undertaking is required by law or rule of court.

(May 9, 2000, D.C. Law 13-105, § 9, 47 DCR 1325.)

Emergency legislation. — For temporary (90-day) addition of section, see notes following § 6-201.

Legislative history of Law 13-105. — For Law 13-105, see notes following § 6-201.

§ 6-209. Power to issue bonds, notes and other obligations.

(a) Pursuant to § 1-204.90, subject to the restrictions of this chapter, the Council delegates to the Authority the power to issue revenue bonds, notes, and other obligations to finance, refinance, or assist in the financing or refinancing of any undertaking of the Authority in the area of housing that is in furtherance, and not inconsistent with, the purposes of this chapter. Nothing in this chapter shall be construed as restricting, impairing, or superseding the authority otherwise vested in the HFA. Each such issuance shall be authorized by a resolution of the Authority and the Authority shall send a copy of the resolution to the Chairman of the Council and the Mayor. The resolution shall describe the nature of the project; the benefits designed to result therefrom, as related to the public purposes of the Authority; and the criteria under which funds will be made available.

(b) The Board shall determine, by enactment of an eligibility resolution, that a housing project or homeownership program contemplated to be financed through a bond issuance meets the requirements of this chapter. Subsequent to enactment of an eligibility resolution, the Authority shall send to the Chairman of the Council and the Mayor written notification thereof, describing the nature of the housing project, the benefits designed to result therefrom as related to the public purposes of the Authority, and the criteria under which funds will be made available.

(c) Each notification transmitted to the Chairman of the Council and the Mayor shall set forth information pertaining to the following:

- (1) Date of application;
- (2) Name and description of the project;
- (3) Address and ward location of the project;
- (4) Developer of the project;
- (5) Amount and type of financing requested;
- (6) Amount and type of federal or District funds involved; and
- (7) The number of units reserved for very-low, low-, and moderate-income persons; income restrictions; and rent levels.

(d)(1) The Authority may not adopt an inducement resolution or a resolution authorizing a bond issuance to fund a project nor may the Authority implement

a proposed housing program submitted in accordance with this section unless the proposal has been submitted to the Council for a 30-day review period, excluding Saturdays, Sundays, holidays, and days of Council recess. During the Council review period, comments of the Council representative from the affected ward shall be considered.

(2) If, during the 30-day review period, the Council does not adopt a resolution disapproving the proposal, the Authority may take action to implement the proposal. The Council may adopt a resolution approving the proposal prior to the expiration of the 30-day period, in which case the Authority may take immediate action to implement the proposal.

(e) If a proposal is disapproved, the resolution shall state the reasons for disapproval. The Authority staff may modify the proposal to address the concerns expressed in the resolution of disapproval and may, without further action of the Board, resubmit the proposal, as modified, for a 30-day review period, excluding Saturdays, Sundays, holidays, and days of Council recess. If, during the 30-day review period, the Council does not adopt a resolution disapproving the resubmitted proposal, the Authority may take action to implement the proposal. The Council may adopt a resolution approving the resubmitted proposal prior to the expiration of the 30-day review period, in which case the Authority may take immediate action to implement the proposal. For the purposes of this section, the term "proposal" shall include financing for housing projects and programs.

(f) The Obligations shall be obligations payable solely from revenues of the Authority, from whatever source derived, including lease or loan payments, dedicated revenues, earnings on the Fund, and any other funds available to the Authority which may be used for such purposes in accordance with applicable law. The Authority may expressly provide additional security by pledge or contribution from any source not proscribed by Title 47 of the District of Columbia Official Code.

(g) Regardless of their form or character, the Obligations shall be negotiable instruments for all purposes of Article 9 of Subtitle I of Title 28, subject only to the specific provisions of the bonds and notes pertaining to registration.

(h) No Officer, employee, or Commissioner of the Authority shall be held personally liable solely because an Obligation is issued. The Authority shall indemnify any person who shall have served as a Commissioner, Officer, or employee of the Authority against financial loss or litigation expense arising out of or in connection with any claim or suit involving allegations that pecuniary harm has been sustained as a result of any transaction authorized by this section, unless the person is found by a final judicial determination not to have acted in good faith and for a purpose which he reasonably believed to be lawful and in the best interest of the Authority.

(i) The issuance and servicing of Obligations by the Authority as contemplated in this section and the adoption of resolutions authorizing the issuance of Obligations shall be done in compliance with the requirements of this chapter, but shall not be subject to the requirements of §§ 2-502 through 2-510, or any successor legislation.

(j) The Authority shall have the power to borrow money and to issue Obligations regardless of whether or not the interest payable by the Authority

under such loans or Obligations or the income derived by the holders of such loans or Obligations is, for the purposes of federal taxation, includable in the taxable income of the recipients of these payments or is otherwise not exempt from the imposition of taxation on the recipients. Whenever expedient, the Authority may refund Obligations, including Obligations previously issued by other than the Authority, by the issuance of new Obligations, regardless of whether or not the Obligations to be refunded have matured. The Authority may also issue Obligations for a combination of refund, renewal, and financing programs authorized by HUD or this chapter.

(k) The Authority shall have the power to contract with the holders of its Obligations as to the custody, collection, securing, investment, and payment of any monies of the Authority and of any monies held in trust or otherwise for the payment of the Obligations, subject to applicable provisions of federal law regarding a program for which Obligations were issued.

(l) The Authority may treat expenses incurred in carrying out a trust indenture as operating expenses.

(m) The Authority shall not issue Obligations pursuant to this chapter unless it has transmitted a written request, which shall be accompanied by a completed application in the form prescribed by HFA, to the HFA that the HFA, pursuant to the Housing Finance Agency Act, issue revenue bonds, notes, or other obligations to finance an undertaking of the Authority, and the HFA has:

(1) Affirmatively declined such request in writing within 30 calendar days of receipt of the request;

(2) Failed to adopt an eligibility resolution pursuant to § 42-2702.07(a) within 45 calendar days after receipt of the request;

(3) Failed to transmit the eligibility resolution to the Council pursuant to § 42-2702.07(a) within 10 business days after the approval of the eligibility resolution by the Board of Directors of the HFA; or

(4) Failed, after adoption of an eligibility resolution as set forth in paragraph (2) of this subsection and the authorization of the proposal by the Council (whether by express approval or failure to disapprove) pursuant to § 42-2702.07(b)(3) or (c), to adopt a bond resolution authorizing issuance of the revenue bonds, notes, or other obligations to fund the undertaking of the Authority within 45 days after authorization of the proposal by the Council.

(n)(1) Notwithstanding the provisions of subsections (b), (c), (d), and (e) of this section, the Authority may, without submission to Council, adopt inducement resolutions or resolutions authorizing issuance of bonds, notes, or other obligations and, pursuant to this section, may issue bonds, notes, or other obligations to finance, refinance, or reimburse development costs of the Capper/Carrollsborg Public Improvements undertaken by the Authority. The issuance of bonds, notes, or other obligations by or on behalf of the Authority to finance, refinance, or reimburse development costs of the Capper/Carrollsborg Public Improvements is in furtherance of, and not inconsistent with, the purposes of this chapter.

(2) The bonds, notes, or other obligations issued under this section may be secured, in whole or in part, by:

(A) The note, and security provided therefor, issued by the District of Columbia pursuant to the PILOT Authorization Increase and Arthur Capper/

Carrollsborg Public Improvements Revenue Bonds Approval Act of 2006, effective March 8, 2007 (D.C. Law 16-244; 54 DCR 609), and § 1-204.90; and

(B) Available revenues, assets, or other property of the Authority, subject to pre-existing agreements with HUD.

(May 9, 2000, D.C. Law 13-105, § 10, 47 DCR 1325; Mar. 20, 2008, D.C. Law 17-118, § 102(b), 55 DCR 1461.)

Effect of amendments. — D.C. Law 17-118 added subsec. (n).

Emergency legislation. — For temporary (90-day) addition of section, see notes following § 6-201.

For temporary (90 day) amendment of section, see § 102(b) of Arthur Capper/Carrollsborg Public Improvement Revenue

Bonds Technical Correction Emergency Act of 2008 (D.C. Act 17-318, March 19, 2008, 55 DCR 3418).

Legislative history of Law 13-105. — For Law 13-105, see notes following § 6-201.

Legislative history of Law 17-118. — For Law 17-118, see notes following § 6-201.

§ 6-210. Terms for sale of Obligations.

(a) The Authority may stipulate, by resolution, the terms for sale of its Obligations in accordance with this chapter, subject to applicable federal law and the requirements of any annual contribution contract or other agreement between the Authority and HUD. Such terms may include the following:

- (1) The date of issuance;
- (2) The maturity date;
- (3) The designation of issuance as term bonds, serial bonds, or a combination of the two;
- (4) The denomination;
- (5) Any interest rate or rates, or variable interest rate or rates changing from time to time, or premium or discount applicable;
- (6) The registration privileges;
- (7) The medium and method for payment; and
- (8) The terms of redemption.

(b) The Authority may sell its Obligations at public or private sale and may determine the price for sale.

(c) A resolution authorizing the sale of Obligations may contain any of the following provisions, in which case these provisions shall be made part of the contract with holders of the Obligations:

(1) The custody, security, expenditure, or application of proceeds of the sale of Obligations of the Authority ("proceeds"); a security interest in the proceeds to secure payment; and the rank or priority of the security interest, subject to preexisting agreements with holders of the Obligations;

(2) A security interest in Authority revenues to secure payment and the rank or the priority of the security interest, subject to preexisting agreements with holders of the Obligations;

(3) A security interest in assets of the Authority, including mortgages and obligations securing mortgages, to secure payment, and the rank or priority of the security interest, subject to preexisting agreements with holders of the Obligations;

(4) The proposed use of gross income from any mortgages owned by the Authority and the payment of principal of mortgages owned by the Authority;

(5) The proposed use of reserves or sinking funds;

(6) Any limitations on the issuance of additional Obligations, including terms of issuance and security, and the refunding of outstanding or other Obligations;

(7) Procedures for amendment or abrogation of a contract with holders of the Obligations, specifying the amount of Obligations, including the manner in which the holders must give consent to such amendment or abrogation;

(8) Any vesting in a trustee of property, power, or duties, which may include the powers and duties of a trustee appointed by holders of the Obligations;

(9) Limitations or abrogations of the rights of holders of the Obligations to appoint a trustee;

(10) A definition of the events of default in the Obligations of the Authority to the holders of the Obligations and specification of the rights and remedies of the holders of the Obligations in the event of default, including the right to the appointment of a receiver in accordance with this section and applicable District law; and

(11) Any other provisions of like or different character which affect the security of holders of the Obligations.

(d) Notwithstanding Article 9 of Subtitle I of Title 28, any security interest created by the Authority shall be valid, binding, and perfected from the time such security interest is created, with or without the physical delivery of any funds or any other property and with or without any further action. Such security interest shall be valid, binding, and perfected whether or not any statement, document, or instrument relating to such security interest is recorded or filed. The lien created by such security interest is valid, binding, and perfected with respect to any individual or legal entity having claims against the Authority, whether or not such individual or legal entity has notice of such lien.

(e) The signature of any authorized Officer of the Authority which appears on an Obligation remains valid and binding upon the Authority if that person ceases to hold office.

(f) The Authority shall secure the Obligations by a trust indenture between the Authority and a corporate trustee which is a trust company within the District.

(g) A trust indenture of the Authority shall contain provisions for protecting and enforcing the rights and remedies of the holders of the Obligations in accordance with the provisions of the resolution authorizing the sale of the Obligations.

(h) Subject to preexisting agreements with the holders of the Obligations, the Authority may purchase its own Obligations, which may then be canceled. The price the Authority pays to purchase its own Obligations shall not exceed the following limits:

(1) If the Obligations are redeemable, the price may not exceed the redemption price then applicable, plus accrued interest to the next-due interest payment; or

(2) If the Obligations are not redeemable, the price may not exceed the

price applicable on the first date following the purchase upon which the Obligations become subject to redemption, plus accrued interest to that date.

(i) The Authority may establish special or reserve funds in furtherance of its authority under this chapter. Subject to agreements with holders of the Obligations, the Authority shall manage its own funds, and may invest funds not required for disbursement in a manner the Board deems to be prudent; provided, that no investment shall be made which causes the interest on the Obligations to be taxable if such interest is intended to be tax-exempt.

(j) The Obligations of the Authority are legal instruments in which public officers and public bodies of the District; insurance companies, insurance company associations, and other persons carrying on an insurance business; banks, bankers, and banking institutions, including savings and loan institutions, trust companies, savings banks, savings associations, investment companies, and other persons carrying on a banking business; administrators, guardians, executors, trustees, and other fiduciaries; and other persons authorized to invest in bonds or in other obligations of the District may legally invest funds, including capital, in their control. The Obligations are also securities which legally may be deposited with and received by public officers and public bodies of the District or any agency of the District for any purpose for which the deposit of bonds or other obligations of the District is authorized by law.

(k) The Obligations issued under the provisions of this chapter do not constitute obligations of the District, but are payable solely from the revenues or assets of the Authority. Each Obligation issued under this chapter must contain on its face a statement to this effect, and a notation that neither the faith and credit nor the taxing power of the District are pledged to the payment of the principal of, or interest on, the Obligation.

(l) Income from the Obligations issued by the Authority shall be exempt from District taxation, except that it shall remain subject to estate and gift taxation.

(m) On or before December 31 of each year, the Authority shall transmit an estimate to the HFA of the total amount of tax-exempt revenue bond financing for all undertakings of the Authority which it reasonably expects the HFA to finance in the following calendar year. The HFA shall include the amount requested in its request to the Mayor for tax-exempt bond volume cap allocation. To the extent that any allocation is received for an undertaking of the Authority, and remains unused for a period of 2 years, the HFA may allocate such amounts to other projects of the HFA.

(n) The District warrants to the Authority, with regard to any and all Obligations issued by the Authority, and to the holders of such Obligations, that the District will not limit or alter rights vested in the Authority to fulfill agreements made with holders of the Obligations, nor in any way impair the rights and remedies available to the holders of the Obligations, until the Obligations and the interest thereon, together with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings brought by or on behalf of the holders of the Obligations, have been fully met, paid, and discharged. The Authority is authorized to

include this pledge of the District in any agreement with the holders of the Obligations.

(May 9, 2000, D.C. Law 13-105, § 11, 47 DCR 1325.)

Emergency legislation. — For temporary (90-day) addition of section, see notes following § 6-201.

Legislative history of Law 13-105. — For Law 13-105, see notes following § 6-201.

§ 6-211. Board of Commissioners.

(a) The powers of the Authority shall be vested in the Board. The Board shall consist of 11 voting Commissioners, to be appointed as follows:

(1) Four public Commissioners, nominated by the Mayor, with the advice and consent of the Council by resolution;

(2) Three resident Commissioners who shall be elected in an election held in, and for certain residents of, the Authority's Housing Properties;

(2A) One housing choice voucher program recipient Commissioner, nominated by the Mayor, with the advice and consent of the Council by resolution;

(3) One *ex officio* Commissioner, the Deputy Mayor for Planning and Economic Development;

(4) One Commissioner who shall be a labor representative named by the central labor council, except that the Commissioner shall not be an employee of the Authority; and

(5) One Commissioner who shall be a housing advocacy representative named by the D.C. Consortium of Legal Services Providers, except that the Commissioner shall not be an employee of the Authority.

(b) Those persons nominated by the Mayor pursuant to subsection (a)(1) of this section shall meet the following requirements:

(1) Each individual's appointment may be recommended by official action of the Advisory Committee; or

(2) Each individual shall be selected by the Mayor from among District residents; provided, that each meets the other criteria indicated in subsections (c) and (d) of this section.

(c) In addition to the requirements of subsections (b) and (d) of this section, each person nominated by the Mayor or recommended by the Advisory Committee shall be an individual who:

(1) Has demonstrated knowledge of, and competence in, corporate governance; public housing law and regulations; real estate and construction; public housing development, operation, and management; subsidized or nonprofit housing production and development; multi-family housing development or management; business finance and investment; community-based redevelopment policies or activities; public management or administration; personnel or procurement administration; municipal finance or law; or philanthropy and social services; and

(2) Is not an officer or employee of the federal government or the District government.

(d) All Commissioners, at time of appointment, shall be residents of the District of Columbia and shall remain residents throughout the term of the appointment.

(e) The Mayor shall transmit resolutions for the appointments of the 4 public Commissioners to the Council within 90 days of May 9, 2000.

(f) The *ex-officio* Commissioner shall serve by virtue of his or her incumbency in a District government office.

(g) A vacancy on the Board shall be filled in the same manner in which the original appointment was made.

(h) All Commissioners shall spend at least 5 days per year in training or educational seminars on corporate governance, public housing law and regulations, labor and personnel, real estate and construction, or other subjects related to public housing development, operation, and management, the cost of which training shall be paid by the Authority.

(i) The elected Commissioners shall be public housing residents, one of whom shall be a resident of, and elected by, the residents of General Population Housing and one of whom shall be a resident of, and elected by, the residents of Mixed Population Housing. No candidate shall be eligible to run for the position of Commissioner unless then in full compliance with his or her lease with the Authority. The Authority shall hold the first election for these 3 seats no later than 180 days after May 9, 2000, in accordance with the provisions hereinafter set forth, and shall provide the names of the elected candidates to the Mayor as soon as practicable thereafter. Each elected Commissioner shall remain on the Board only if he or she continues to reside in public housing in the District.

(j) The Commissioners shall serve 3-year terms, which shall be staggered. On the initial Board, the 3 elected Commissioners shall each serve a term of 3 years, the Chairperson shall serve a term of 3 years, 2 of the appointed Commissioners shall each serve initial terms of 2 years, and the remaining Commissioners shall each serve a term of one year.

(k)(1) The initial elections for the 3 elected Commissioners shall be conducted in accordance with rules and procedures established by the Receiver. Thereafter, elections shall be conducted in accordance with rules and procedures established by the Board, and shall be held no sooner than 5 months and no later than 2 months prior to the expiration of the then current 3-year term. All elections shall be held under the supervision of an independent expert in election monitoring, to be selected by the Receiver for the initial election and thereafter by the Board.

(2) The results of each election shall be retained until the elected Commissioners begin their term pursuant to the next scheduled election. If one of the elected Commissioners becomes unable to serve or is removed from the Board as hereinafter provided, that Commissioner's seat for the remaining term shall be filled as follows:

(A) If the remaining term is less than 180 days, a new Commissioner shall be appointed by the City-Wide Resident Council Advisory Board; or

(B) If the remaining term is 180 days or more, a special election shall be held in accordance with the procedures established under paragraph (1) of this subsection.

(l) Each vacancy in an unexpired term of an appointed Commissioner shall be filled by appointment within no more than 90 days of the vacancy in the

same manner as the appointment was made, and shall be for the duration of the unexpired term.

(m) The Mayor shall designate one of his or her 4 nominees nominated pursuant to subsection (a)(1), of this section as Chairperson. The *ex officio* Commissioner shall not be appointed as Chairperson. The Chairperson shall conduct the meetings of the Board in accordance with procedures established by the Board.

(n) The Commissioners may select a Vice Chairperson from among themselves, with a term and functions to be determined by them.

(o) Resident Commissioners shall not be in violation or default of their lease obligations to the Authority. Any such violation or default, and failure to cure the same, if available, within the applicable period of time after notice, shall be cause for a resident Commissioner's removal from the Board. In addition, subject to a final determination through the applicable grievance or other procedure, (which shall include notice of the charges against the resident Commissioner and an opportunity to be heard in person or by counsel in his defense), a resident Commissioner's eviction or voluntary departure from the Authority's Housing Properties, shall be cause for removal from the Board. During the pendency of any action against a resident Commissioner, the Commissioner may be suspended.

(p) No Commissioner shall have any past due taxes, special assessments, or other charges owing to the District. Failure to timely pay any such amounts due, or to pay overdue taxes, assessments, or other District charges after demand therefor and after a final determination pursuant to the applicable grievance or other procedure, (which shall include notice of the charges against the elected Commissioner and an opportunity to be heard in person or by counsel in his defense), shall be cause for a Commissioner's removal from the Board.

(q) Other than the *ex officio* Commissioner and the labor representative who is a Commissioner, no person shall serve as a Commissioner who is an employee of the Authority or of the District government; a member of any District board or commission (including those that are purely advisory, except for Advisory Neighborhood Commissions); a spouse or domestic partner of the head of a District department or agency; a spouse or domestic partner of an Authority employee; a spouse or domestic partner of an elected official; or a parent or child of any of the above persons.

(r) No Commissioner may be held personally liable for any action taken in accordance with, and in furtherance of, his or her official duties and responsibilities as set forth in this chapter.

(s) Each Commissioner, other than the *ex officio* Commissioner and the Chairperson, shall be entitled to a stipend of \$3,000 per year for their service on the Board; the Chairperson shall be entitled to a stipend of \$5,000 per year. Each Commissioner also shall be entitled to reimbursement of actual travel and other expenses reasonably related to attendance at Board meetings and fulfillment of official duties. Stipends and reimbursements shall be made at least quarterly.

(t) The Board may, by majority vote, remove any Commissioner for official misconduct, conflict of interest violations, neglect of duty, incompetence, or

personal misconduct, but only after the Commissioner shall have been given a copy of the charges and an opportunity to answer those charges in accordance with a procedure established in the by-laws or other rules of the Board. The Chairperson shall suspend a Commissioner pending the Board's consideration of the charges. If the Chairperson is the Commissioner against whom charges have been made, the Mayor shall suspend the Chairperson pending such consideration.

(u) The Board may, by majority vote, require that any Commissioner or Executive Director resolve conflict of interest violations by public disclosure of the conflict of interest and recusal from the decision-making process involving the conflict, divestiture, or any other manner that does not violate local or federal law.

(v) In addition to those powers conferred elsewhere in this chapter, the Board is charged with the duty to govern all the affairs of the Authority and shall have all powers necessary or appropriate to carry out the purposes of this chapter, including the following:

(1) To review and approve all contracts for goods or services having a value of more than \$250,000;

(2) To make and implement rules, by-laws, and policies and regulations necessary or appropriate for the effective administration of the Authority and the fulfillment of the purposes of this chapter;

(3) To promulgate rules and procedures for the election of the elected Commissioners, and to conduct such elections;

(4) To evaluate the Executive Director's job performance from time to time; and

(5) To perform such other functions as are needed to ensure the provision of quality services to the residents of the Housing Properties.

(w) The Board shall meet regularly at least 10 times each calendar year. All meetings of the Board shall be conducted in public after publication of notice of the date, time, and location of the meeting, at least one week prior thereto, in the District of Columbia Register. Each meeting shall provide for a period for public comments, which shall not be limited in time, except that the time allowed each individual speaker may be reasonably limited. To allow the Board to meet and entertain any proposed action, there must be a quorum present, which shall consist of 5 Commissioners. The public notice requirement of this subsection shall not preclude the holding of an emergency meeting of the Board if the meeting is deemed by the Chairperson to be necessary. If a proposed action concerns a personnel matter, a claim or contract in negotiation, or some other matter of a sensitive nature, the Board may adjourn its public session to discuss the matter in an executive session, but must return to its public session to vote on the matter.

(May 9, 2000, D.C. Law 13-105, § 12, 47 DCR 1325; Apr. 12, 2005, D.C. Law 15-337, § 2(c), 52 DCR 2278; Sept. 12, 2008, D.C. Law 17-231, § 15(b), 55 DCR 6758; Mar. 23, 2010, D.C. Law 18-131, § 2, 57 DCR 1193; Mar. 31, 2011, D.C. Law 18-334, § 2, 58 DCR 30.)

Effect of amendments. — D.C. Law 15-337, in subsec. (q), substituted “(including those that are purely advisory, except for Advisory Neighborhood Commissions)” for “(including those that are purely advisory)”⁴; rewrote subsec. (s); and rewrote the first three sentences of subsec. (w) which had read: “The Board shall meet at least once each month. All meetings of the Board shall be conducted in public after publication of notice of the date, time, and location of the meeting, at least one week prior thereto, in the District of Columbia Register. Each meeting shall commence with a period for public comments, which shall not be limited in time, except that the time allowed each individual speaker may be reasonably limited.” Prior to amendment, subsec. (s) read as follows: “(s) Each Commissioner shall be entitled to compensation at the hourly rate of \$25 per meeting, not to exceed \$3,000 for each board member per year; provided, that each Commissioner shall be entitled to reimbursement of actual travel and other expenses reasonably related to the Commissioner’s attendance at Board meetings and fulfillment of official duties.”

D.C. Law 17-231, in subsec. (q), substituted “spouse or domestic partner” for “spouse”.

D.C. Law 18-131, in subsec. (a), substituted “11” for “9” in the lead in language, added pars. (2A) and (5), deleted “; and” from the end of par. (3), and substituted “; and” for a period at the end of par. (4); in subsec. (b), inserted “pursuant to subsection (a)(1) of this section”; in subsec. (m), inserted “nominated pursuant to subsection (a)(1) of this section”; and, in subsec. (l), substituted “Elected” for “Resident”, “a resident” for “an elected”, and “the resident” for “the elected”.

D.C. Law 18-334, in subsec. (a)(2A), substituted “housing choice voucher program recipient” for “recipient”.

Emergency legislation. — For temporary (90-day) addition of section, see notes following § 6-201.

Legislative history of Law 13-105. — For Law 13-105, see notes following § 6-201.

Legislative history of Law 15-337. — For Law 15-337, see notes following § 6-201.

Legislative history of Law 17-231. — For Law 17-231, see notes following § 6-201.

Legislative history of Law 18-131. — Law 18-131, the “District of Columbia Housing Authority Board of Commissioners Amendment Act of 2010”, was introduced in Council and assigned Bill No. 18-458, which was referred to the Committee on Housing and Workforce Development. The bill was adopted on first and second readings on December 15, 2009, and January 5, 2010, respectively. Approved without signature of the Mayor on January 25, 2010, it was assigned Act No. 18-293 and transmitted to both Houses of Congress for its review. D.C. Law 18-131 became effective on March 23, 2010.

Legislative history of Law 18-334. — Law 18-334, the “District of Columbia Housing Authority Board of Commissioners Amendment Act of 2010”, was introduced in Council and assigned Bill No. 18-1005, which was referred to the Committee on Housing and Workforce Development. The Bill was adopted on first and second readings on November 23, 2010, and December 7, 2010, respectively. Enacted without signature of the Mayor on January 8, 2011, it was assigned Act No. 18-656 and transmitted to both Houses of Congress for its review. D.C. Law 18-334 became effective on March 31, 2011.

§ 6-212. Establishment of Authority Advisory Committee.

(a) There is established an Authority Advisory Committee.

(b) The membership on the Advisory Committee shall consist of 7 members, with one member representing each of the following organizations, or the successors in interest to these organizations (if an organization has no direct successor, the Board shall select an appropriate replacement organization):

- (1) DC Action for Children;
- (2) The D.C. Chamber of Commerce;
- (3) The Coalition for Nonprofit Housing Development;
- (4) The D.C. Building Industry Association;
- (5) A representative of the advocacy organizations that instituted the lawsuit entitled *Pearson v. Kelly, et al.*, 92-CA-14030 (Sup. Ct. D.C., May 19, 1995);
- (6) One resident of the Authority’s Housing Properties; and
- (7) The Mayor’s Special Assistant in charge of the Office of Boards and Commissions.

(c) Members shall serve without compensation.

(d) The Advisory Committee shall advise the Mayor and the Authority with respect to the following:

(1) The naming of appropriate candidates as public members of the Board; and

(2) Any other issues directly related to the operations of the Authority.

(e) Within 15 days of May 9, 2000, the organizations described in subsection (b) of this section shall provide the Mayor and the Receiver with the name of its representative to the Advisory Committee. The first meeting of the Advisory Committee shall be scheduled by the Receiver, and shall be held no later than 30 days after May 9, 2000.

(f) The Advisory Committee shall remain in existence beyond the establishment of the Board, and shall convene when necessary to assist the Mayor in selecting new nominees if a position on the Board is vacated or becomes available upon the expiration of a member's term.

(g) When a member of the Advisory Committee resigns or is replaced, the name of a successor shall be provided to the Board by the organization which the member represents.

(h) The Advisory Committee shall select 3 suitable candidates for each of the 4 Mayor-appointed Commissioner positions, and shall submit its nominees to the Mayor by no later than 60 days after May 9, 2000. The Mayor may select one person from each group of 3 submitted by the Advisory Committee for each of the public appointed positions.

(i) In making suggestions to the Mayor for nominees for the Board, the Advisory Committee shall select persons with experience in at least one of the fields enumerated in § 5-161(c)(1).

(May 9, 2000, D.C. Law 13-105, § 13, 47 DCR 1325.)

Emergency legislation. — For temporary (90-day) addition of section, see notes following § 6-201.

Legislative history of Law 13-105. — For Law 13-105, see notes following § 6-201.

§ 6-213. Executive Director.

(a) An Executive Director shall be appointed, and may be removed, by the Board. The Executive Director shall be an employee of the Authority, but shall not be a member of the Board. The Executive Director shall receive compensation and other terms and conditions of employment as shall be fixed by the Board. The Executive Director shall be a District resident and shall remain a District residency throughout his or her term and failure to maintain District residency shall result in a forfeiture of the position.

(b) The Board shall require the Executive Director to achieve specific performance standards approved by the Board. The Board shall submit the Public Housing Agency Plans, required pursuant to section 5A of the Housing Act of 1937 [42 U.S.C. § 1437c-1], to the Council for review and comment not less than 45 days prior to submitting the required documents to HUD.

(c) The Executive Director shall, subject to the direction and supervision of the Board:

(1) Administer, manage, and direct the daily affairs and activities of the Authority;

(2) Supervise the staff of the Authority, make all final personnel decisions, and employ assistants, employees, and consultants as necessary in accordance with this chapter and the rules, regulations, by-laws, and policies adopted by the Board;

(3) Execute leases, deeds, notes, bonds, contracts, and other documents on behalf of the Authority; and

(4) Perform such other duties as shall be assigned by the Board.

(May 9, 2000, D.C. Law 13-105, § 14, 47 DCR 1325; Feb. 6, 2008, D.C. Law 17-108, § 208(a), 54 DCR 10993.)

Effect of amendments. — D.C. Law 17-108, in subsec. (a), inserted “The Executive Director shall be a District resident and shall remain a District residency throughout his or her term and failure to maintain District residency shall result in a forfeiture of the position.”

Emergency legislation. — For temporary (90-day) addition of section, see notes following § 6-201.

Legislative history of Law 13-105. — For Law 13-105, see notes following § 6-201.

Legislative history of Law 17-108. — Law

17-108, the “Jobs for D.C. Residents Amendment Act of 2007”, was introduced in Council and assigned Bill No. 17-185 which was referred to the Committee on Workforce Development and Government Operations. The Bill was adopted on first and second readings on July 10, 2007, and October 2, 2007, respectively. Signed by the Mayor on October 26, 2007, it was assigned Act No. 17-172 and transmitted to both Houses of Congress for its review. D.C. Law 17-108 became effective on February 6, 2008.

§ 6-214. Social services teams in public housing.

(a) The Authority may, subject to availability of funds, develop a plan for the provision of social services within the Housing Properties which it owns, operates, or manages, and establish social service teams to implement that plan.

(b) Nothing in this section shall be construed to prohibit other District or United States government departments and agencies from providing social services to public housing residents.

(May 9, 2000, D.C. Law 13-105, § 15, 47 DCR 1325.)

Emergency legislation. — For temporary (90-day) addition of section, see notes following § 6-201.

Legislative history of Law 13-105. — For Law 13-105, see notes following § 6-201.

§ 6-215. Status of Authority employees.

(a) All employees hired by the Authority after May 9, 2000, shall be employees of the Authority and not of the District. No provision of Chapter 6 of Title 1 shall apply to employees of the Authority except as follows:

(1) Subchapters V and XVII shall apply to the labor-management relationship between the Authority and its employees, except that the Authority shall have sole authority with respect to the development and approval of compensation agreements between the Authority and labor organizations without the approval of the Mayor and Council;

(2) Subchapter XV-A shall apply to Authority employees; and

(3) Subchapter XXIII shall continue to apply to Authority employees, except that the Authority may participate in the private sector workers' compensation program, and Authority employees shall be entitled to the coverage and benefits available to employees under Chapter 15 of Title 32, at such time as the Authority deems that such participation is most favorable to the Authority; provided, that with regard to employees subject to collective bargaining agreements, any change from the public to the private sector workers' compensation program shall be made only by agreement between the collective bargaining representative and the Authority.

(b) All Authority employees continuously employed by the District government since December 31, 1979 shall be guaranteed rights and benefits at least equal to those currently applicable to such persons under provisions of law and regulations in force prior to May 9, 2000.

(c) Every incumbent employee serving the Authority on May 9, 2000, shall be retained in a position with at least equal classification, compensation, and benefits as the position held on the day before May 9, 2000.

(d) The Authority shall be bound by all existing collective bargaining agreements with labor organizations until successor agreements have been negotiated. Except as specifically provided in this chapter, the Authority shall be subject to all general laws applicable to public employers in the District of Columbia, including laws concerning human rights, wages and hours, and occupational safety and health.

(e) If the Authority applies to the PERB for review of an arbitration award in accordance with § 1-605.02 and the PERB denies review, the PERB shall enter an order requiring the Authority to comply with the award and the Authority shall be liable to the labor organization for its litigation expenses, including attorneys' fees, in connection with the arbitration proceedings and the proceedings before the PERB. If the labor organization prevails in any subsequent litigation brought by the Authority with respect to the same award, the Authority shall be liable to the labor organization for its litigation expenses, including attorneys' fees, in connection with the litigation.

(f) Notwithstanding the provisions of Unit A of Chapter 14 of Title 2, each qualified District resident applicant shall receive an additional 10-point preference over a qualified non-District resident applicant for all positions within the Authority unless the applicant declines the preference. This 10-point preference shall be in addition to, and not instead of, qualifications established for the position. All persons hired after February 6, 2008, shall submit proof of residency upon employment in a manner determined by the Board. An applicant claiming the hiring preference under this section shall agree in writing to maintain bona fide District residency for a period of 7 consecutive years from the effective date of hire and shall provide proof of such residency annually to the director of personnel of the Authority for the first 7 years of employment. Failure to maintain District residency for the consecutive 7-year period shall result in forfeiture of employment. The Authority shall submit to the Mayor and the Council annual reports detailing the names of all new employees and their pay schedules, titles, and place of residence.

(May 9, 2000, D.C. Law 13-105, § 16, 47 DCR 1325; Feb. 6, 2008, D.C. Law 17-108, § 208(b), 54 DCR 10993.)

Effect of amendments. — D.C. Law 17-108 added subsec. (f).

Emergency legislation. — For temporary (90-day) addition of section, see notes following § 6-201.

Legislative history of Law 13-105. — For Law 13-105, see notes following § 6-201.

Legislative history of Law 17-108. — For Law 17-108, see notes following § 6-216.

§ 6-216. Authority employees' benefits.

(a) The Authority is authorized to establish and administer its own employment benefits programs for individuals who become employed by the Authority other than individuals who make an election under subsection (b) of this section, except that any newly-established benefits for bargaining unit employees must be at least equal to those currently set out in subchapters XXI, XXII, and XXVI of Chapter 6 of Title 1. With regard to employees who are covered by a collective bargaining agreement, no such benefit programs shall be made available or required of such employees except by agreement between the collective bargaining representative and the Authority.

(b) Authority employees shall continue to be covered under the health, life, and retirement benefit plans of the District government pursuant to subchapters XXI, XXII, and XXVI of Chapter 6 of Title 1 until the Authority adopts its own employment benefit programs. Authority employees hired before the Authority establishes its own health, life, or retirement benefits plans, who remain continuously employed by the Authority, may elect to be treated for purposes of District benefit plans as if the employee remained continuously in the employment of the District government with all rights, benefits, and privileges that have accrued to, and vested in, the employees. Employees hired by the Authority after the date that the Authority establishes its own health, life, or retirement plans may not elect to continue coverage under the health, life, or retirement benefit plans of the District government.

(c) If an employee makes an election under subsection (b) of this section, the Authority shall make the same deductions from pay and the same employer contributions for the corresponding programs as would be made if the Authority were a District agency that is subject to subchapters XXI, XXII, and XXVI of Chapter 6 of Title 1.

(d) For a negotiated fee, the Mayor shall administer the benefits program and allow Authority employees to participate in the District's benefits plans and programs, which fee shall be on terms reasonable to both the District and the Authority. The Mayor shall provide assistance to the Authority to meet the requirements of subsection (b) of this section.

(May 9, 2000, D.C. Law 13-105, § 17, 47 DCR 1325.)

Emergency legislation. — For temporary (90-day) addition of section, see notes following § 6-201.

Legislative history of Law 13-105. — For Law 13-105, see notes following § 6-201.

§ 6-217. Drug and alcohol testing of Authority employees.

(a) The Authority may establish a program of, and issue rules for, conducting pre-employment, random, reasonable suspicion, post-accident, return to duty, and follow-up testing for the use of a controlled substance in violation of law or regulation, and testing for alcohol, for Authority employees and candidates for employment with the Authority. Only employees whose duties include responsibility for safety-sensitive or high-risk potential functions may be subject to random testing.

(b) In prescribing rules under the testing program required by this section, the Authority may require the suspension or termination of an Authority employee when a test indicates that the employee has used a controlled substance or alcohol in violation of Authority rules.

(c) With regard to employees who are covered by a collective bargaining agreement, the drug and alcohol testing program and rules shall be made applicable to such employees only by agreement between the collective bargaining representative and the Authority.

(May 9, 2000, D.C. Law 13-105, § 18, 47 DCR 1325.)

Emergency legislation. — For temporary (90-day) addition of section, see notes following § 6-201.

Legislative history of Law 13-105. — For Law 13-105, see notes following § 6-201.

§ 6-218. Applicability of the Hatch Act.

The provisions of 5 U.S.C. §§ 7321 through 7328 affecting political activities of employees shall apply to employees of the Authority.

(May 9, 2000, D.C. Law 13-105, § 19, 47 DCR 1325.)

Emergency legislation. — For temporary (90-day) addition of section, see notes following § 6-201.

Legislative history of Law 13-105. — For Law 13-105, see notes following § 6-201.

§ 6-219. Procurement.

Until the Board promulgates procurement regulations in accordance with this section, the Authority's existing rules governing procurement shall continue to apply. Within 180 days of May 9, 2000, the Board shall transmit proposed procurement regulations to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the regulations, in whole or in part, by resolution within the 45-day review period, the regulations shall be deemed approved. The Board's procurement regulations shall include rules and procedures governing public notice of invitations to bid; methods of source selection, including competitive sealed bidding and competitive sealed proposals; small purchase procurements; cost principles; delivery and performance; contract modification; and contract termination. The Procurement Act shall not apply to contracts and contractors of the Authority, except that subchapter IX of

Chapter 6 of Title 1 shall apply to contract protests, appeals, and claims arising from procurements of the Housing Authority.

(May 9, 2000, D.C. Law 13-105, § 20, 47 DCR 1325.)

Emergency legislation. — For temporary (90-day) addition of section, see notes following § 6-201.

Legislative history of Law 13-105. — For Law 13-105, see notes following § 6-201.

§ 6-220. Financial disclosure and conflict of interest — Board of Commissioners and Executive Director.

(a) An affidavit of financial disclosure shall be completed and submitted by each Commissioner within 30 days of his or her appointment and by the Executive Director at the time his or her contract, to the extent such a contract exists or is required, is being negotiated with the Board. Refusal to comply with this requirement shall be cause for removal or termination. The form or forms of financial disclosure shall be developed by the General Counsel or designated Ethics Officer and approved by the Board. The completed disclosure forms shall be retained in the records of the General Counsel or Ethics Officer.

(b) For a period of one year after termination or expiration of his or her term as a Commissioner or his or her term of employment, no former Commissioner or Executive Director shall appear before any court or government department or agency as agent or attorney for anyone other than the Authority in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the Authority is substantially interested, whether or not he or she took any action or made any decision as Commissioner or Executive Director in connection with such matter. This provision shall not preclude compliance with a subpoena duly issued to any former Commissioner or Executive Director.

(c)(1) The General Counsel shall advise the Board of potential conflict of interests involving any Commissioner or the Executive Director. The General Counsel shall advise the Board whether:

- (A) There is an appearance of a conflict of interest;
- (B) There is a conflict of interest;
- (C) There is no conflict of interest; or

(D) There is good cause to waive the conflict of interest provisions because an extraordinary situation exists and the Authority would benefit from the waiver.

(2) A conflict of interest may be resolved by public disclosure of the conflict of interest and recusal from the decision-making process with respect to the conflict, divestiture, or by any other manner that does not violate local or Federal law.

(3) For the purposes of this section, a conflict of interest shall include any financial interest, either directly or indirectly:

(A) In any contract to which the Authority is a party for the purchase of supplies, materials, equipment, or services; or

(B) In any entity involved directly or indirectly in any transaction with the Authority, including construction companies, real estate development firms, property management companies, and service providers.

(May 9, 2000, D.C. Law 13-105, § 21, 47 DCR 1325.)

Emergency legislation. — For temporary (90-day) addition of section, see notes following § 6-201.

Legislative history of Law 13-105. — For Law 13-105, see notes following § 6-201.

§ 6-221. Financial disclosure and conflict of interest — employees.

(a) An affidavit of financial disclosure shall be completed and submitted by each employee of the Authority prior to the effective date of employment, and shall be updated annually, if required by the Authority. Refusal to comply with this requirement shall be cause for removal or termination. The form or forms of disclosure shall be developed by the Authority's General Counsel or designated Ethics Officer and approved by the Board, and the completed disclosure forms shall be retained in the records of the General Counsel or Ethics Officer.

(b) For a period of one year after termination or expiration of his or her term of employment, no Officer shall appear before any court or government department or agency as agent or attorney for anyone other than the Authority in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the Authority is substantially interested, whether or not he or she took any action or made any decision as officer in connection with such matter. This provision shall not preclude compliance with a subpoena duly issued to any former Officer.

(c)(1) Any Officer or employee of the Authority who has a conflict of interest must disclose the nature and circumstances of the conflict to the Authority and the General Counsel. The General Counsel shall review conflict of interests and make a case-by-case legal determination whether there is a conflict of interest and, if so, whether there is good cause to waive the conflict of interest based upon the facts presented.

(2) A conflict of interest shall include:

(A) Any employee designated to handle purchasing or contracting for the Authority who has any financial interest, either directly or indirectly, in any contract to which the Authority is a party for the purchase of supplies, materials, equipment, or services; or

(B) Any employee of the Authority in a decision-making capacity who has any financial interest, either directly or indirectly, in any contract to which the Authority is a party or in any entity involved directly or indirectly in any transaction with the Authority, including construction companies, real estate development firms, property management companies, and service providers.

(d)(1) The General Counsel shall notify the Executive Director if a conflict of interest exists involving any employee or Officer. The General Counsel shall determine whether:

- (A) There is an appearance of a conflict of interest;
- (B) There is a conflict of interest;
- (C) There is no conflict of interest; or

(D) There is good cause to waive the conflict of interest provisions because an extraordinary situation exists and the Authority would benefit from the waiver.

(2) A conflict of interest may be resolved by public disclosure of the conflict of interest and recusal from the decision making process with respect to the conflict, divestiture, or any other manner that does not violate local or federal law.

(May 9, 2000, D.C. Law 13-105, § 22, 47 DCR 1325.)

Emergency legislation. — For temporary (90-day) addition of section, see notes following § 6-201. **Legislative history of Law 13-105.** — For Law 13-105, see notes following § 6-201.

§ 6-222. Local law exemption.

The provisions of Chapter 17 of Title 42, shall not apply to the property managers of the residential component of any Housing Properties under the jurisdiction of the Authority. The activities of such property managers shall be regulated by the applicable statutes, rules, and regulations of the United States.

(May 9, 2000, D.C. Law 13-105, § 23, 47 DCR 1325.)

Emergency legislation. — For temporary (90-day) addition of section, see notes following § 6-201. **Legislative history of Law 13-105.** — For Law 13-105, see notes following § 6-201.

§ 6-223. District of Columbia Housing Authority Police Department.

(a) The Authority is authorized to establish and maintain a regular police department, to be known as the District of Columbia Housing Authority Police Department, to provide protection for its residents, employees, and properties, both real and personal. The DCHAPD shall be composed of both uniformed and plainclothes personnel. The DCHAPD shall be charged with the duty of enforcing laws, ordinances, rules, and regulations of the Authority. Members of the DCHAPD shall have the power to execute any traffic citation or any criminal process (misdemeanor or felony) issued by any court of the District, or any felony, misdemeanor, or other offense against District laws, ordinances, rules, or regulations. The jurisdiction of the DCHAPD shall be concurrent with that of the Metropolitan Police Department and coextensive with the territorial boundaries of the District of Columbia.

(b) The members of the DCHAPD shall have concurrent jurisdiction in the performance of their duties with the duly constituted law enforcement agencies of the District. Nothing contained in this section shall either relieve any agency from its duty to provide police, fire, or other public safety service and

protection, or limit, restrict, or interfere with the jurisdiction or performance of duties by existing police, fire, and other public safety agencies.

(c) A member of the DCHAPD shall have the same powers, including the power of arrest, and shall be subject to the same limitations, including regulatory limitations, in the performance of his or her duties as a member of the Metropolitan Police Department. Members of the DCHAPD are authorized to carry and use only such weapons, including handguns, as are issued by the Authority. Members of the DCHAPD are authorized to carry issued weapons both on and off duty in the District and are subject to such additional limitations as are imposed on the Metropolitan Police Department in accordance with § 22-4505.

(d) Upon the apprehension or arrest of any person by a member of the DCHAPD, the officer, as required by the laws of the District, shall either issue a summons or a citation to the person, book the person, or deliver the person to the Metropolitan Police Department for disposition as required by law.

(e)(1) The Authority shall have the power to adopt rules and regulations and to establish fines for the safe, convenient, and orderly use of the Housing Properties owned, managed, or operated by the Authority, including the protection of the Authority's residents, employees, and property (real and personal), and the control of traffic and parking in, on, or around the Housing Properties owned, managed, or operated by the Authority. If any such rules and regulations contravene the laws, ordinances, rules, or regulations of the District which are existing or subsequently enacted, the laws, ordinances, rules, or regulations of the District shall apply and the conflicting rule or regulation, or portion thereof, of the Authority shall be void.

(2) The rules and regulations established under paragraph (1) of this subsection shall be adopted and published in accordance with the standards of due process, including the publication or circulation of a notice of the intended action of the Authority in the District of Columbia Register. The adoption and publication of rules and regulations shall afford to interested persons the opportunity to submit statements orally or in writing. After adoption, the rules and regulations shall be published in the District of Columbia Register.

(3) Any person violating any rule or regulation established under paragraph (1) of this subsection shall, upon a civil judgment by a court of competent jurisdiction, pay a fine of not more than \$500, plus costs.

(f) With respect to members of the DCHAPD, the Authority shall:

(1) Establish classifications based on the nature and scope of duties and fix and provide for their qualifications, appointment, removal, tenure, term, compensation, pension, and retirement benefits;

(2) Provide training and, for this purpose, the Authority may enter into contracts or agreements with any public or private organization engaged in police training. The training and the qualifications of the uniformed and plainclothes personnel shall at least be equal to the requirements of the Metropolitan Police Department for its personnel performing comparable duties;

(3) Prescribe distinctive uniforms to be worn; and

(4) Prescribe vehicles to be used, and a distinctive license tag to be affixed thereto.

(g) The Authority shall have the power to enter into agreements with public safety agencies, including those of the federal government, for the delineation of the responsibilities of the DCHAPD and with duly constituted police, fire, and other public safety agencies for mutual assistance.

(h) Before entering upon the duties of office, each member of the DCHAPD shall take or subscribe to an oath of affirmation, in the presence of a person authorized to administer oaths, to faithfully perform the duties of that office.

(i)(1) Retired police officers of the Metropolitan Police Department may be employed as members of the DCHAPD.

(A) Except for disability annuitants, police officers retired from the Metropolitan Police Department shall be eligible for rehire as members of the DCHAPD without jeopardy to any retirement benefits of the police officers.

(B) Service shall not count as creditable service for the purposes of § 5-704.

(2) All costs associated with the hiring of retired police officers as members of the DCHAPD shall be paid by the Authority.

(j) Members of the DCHAPD shall be subject fully to the authority of the Police Complaint Board pursuant to Chapter 11 of Title 5. For the purposes of the Police Complaint Board, the Chief of the DCHAPD shall perform the duties of the Chief of Police of the Metropolitan Police Department for the members of the DCHAPD.

(May 9, 2000, D.C. Law 13-105, § 24, 47 DCR 1325; Mar. 2, 2007, D.C. Law 16-191, § 28, 54 DCR 6794.)

Effect of amendments. — D.C. Law 16-191, in subsec. (j), substituted “Police Complaint Board” for “Citizen Complaint Review Board (‘CCRB’)” in the first sentence, and substituted “Police Complaint Board” for “CCRB” in the second sentence.

Legislative history of Law 13-105. — For Law 13-105, see notes following § 6-201.

Legislative history of Law 16-191. — Law 16-191, the “Technical Amendments Act of

2006”, was introduced in Council and assigned Bill No. 16-760, which was referred to the Committee of the whole. The Bill was adopted on first and second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 31, 2006, it was assigned Act No. 16-475 and transmitted to both Houses of Congress for its review. D.C. Law 16-191 became effective on March 2, 2007.

§ 6-224. Disposition of assets on dissolution.

If the Authority is dissolved by repeal of this chapter or ceases to exist for any other reason, all of its assets (including cash, accounts receivable, reserve funds, real or personal property, and contract and other rights) shall become the property of the District. In such event, no funds in the Fund shall be deposited into any District fund or account without the prior written approval of HUD; provided, that in the event of such approval, all such funds shall be deposited and maintained in an account or accounts separate from the General Fund of the District.

(May 9, 2000, D.C. Law 13-105, § 25, 47 DCR 1325.)

Emergency legislation. — For temporary (90-day) addition of section, see § 24 of the District of Columbia Housing Authority Emer-

gency Act of 1999 (D.C. Act 13-259, February 9, 2000, 47 DCR 1129).

For temporary (90-day) addition of section,

see § 24 of the District of Columbia Housing Authority Congressional Review Emergency Act of 2000 (D.C. Act 13-346, June 5, 2000, 47 DCR 4980).

Legislative history of Law 13-105. — For Law 13-105, see notes following § 6-201.

§ 6-225. Intragovernmental cooperation.

To the extent practicable and as pertaining to the economic enhancement of the District of Columbia, the Authority shall work cooperatively with the development of annual workplans and budgets for the following:

- (1) Office of the Deputy Mayor for Planning and Economic Development;
- (2) Department of Housing and Community Development;
- (3) Office of Property Management;
- (4) National Capital Revitalization Corporation;
- (5) Community Development Corporations; and
- (6) Business Improvement Districts.

(May 9, 2000, D.C. Law 13-105, § 26, 47 DCR 1325.)

Emergency legislation. — For temporary (90-day) addition of section, see § 25 of the District of Columbia Housing Authority Emergency Act of 1999 (D.C. Act 13-259, February 9, 2000, 47 DCR 1129).

For temporary (90-day) addition of section,

see § 25 of the District of Columbia Housing Authority Congressional Review Emergency Act of 2000 (D.C. Act 13-346, June 5, 2000, 47 DCR 4980).

Legislative history of Law 13-105. — For Law 13-105, see notes following § 6-201.

§ 6-226. Rent Supplement Program: establishment of program and distribution of funds.

(a) The Rent Supplement Program is established to provide housing assistance to extremely low-income District residents, including those who are homeless and those in need of supportive services, such as elderly individuals or those with disabilities. The funding of this program is subject to appropriation. The Authority shall administer the program and shall promulgate rules for its implementation. The assistance under this section, § 6-227, and § 6-228 shall not constitute an entitlement.

(b) The Authority shall allocate the funds appropriated for the program annually toward project-based and sponsor-based voucher assistance, as described in § 6-227, tenant-based assistance, as described in § 6-228, and capital-based assistance, as described in § 6-229.

(c) The Authority shall promulgate rules, subject to Council approval, as required in §§ 6-227 and 6-228, which shall govern the distribution of funds under this program. If federal rules affect local funds, the Authority shall incorporate such rules into the submission to the Council required under this section, § 6-227, and § 6-228, except if the rules are inconsistent with this section, § 6-227, and § 6-228. The rules shall provide for allocating project-based, tenant-based, and sponsor-based funds to maintain or create new affordable housing units, including by combining funds under this program with other sources of funds for housing production and development.

(d)(1) There is established a fund designated as the Rent Supplement Fund (“Fund”), which shall be separate from the General Fund of the District of

Columbia. All revenues, grants, receipts, or other funds specifically identified or required by any provision of District of Columbia law to be paid into the Fund, and all interest earned on those funds, shall be deposited in the Fund without regard to fiscal year limitation pursuant to an act of Congress and shall be used solely to fund grants and provide assistance as set forth in this section and § 6-227. All funds deposited into the Fund shall not revert to the General Fund of the District of Columbia at the end of any fiscal year or at any other time, but shall be continually available for the uses and purposes set forth in this section and § 6-227, subject to authorization by Congress in an appropriations act.

(2) With regard to project-based and sponsor-based voucher assistance, in any given year, the Authority shall spend the specified percentage of its funds that accrues in that year for the purpose of funding grants under this section, unless it provides written justification to the Council for not doing so.

(e)(1) The Authority shall fill no fewer than 175 units in new or existing Rent Supplement Program project-based or sponsor-based units with Housing First program participants. The Authority shall require providers of project-based or sponsor-based housing under the Rent Supplement Program to provide a preference for and house families and individuals referred to their programs by the Department of Human Services.

(2) This subsection shall not apply if the fiscal year 2012 appropriation for the Department of Human Services is increased by \$1,600,000, pursuant to the Fiscal Year 2012 Budget Request Act, passed by the Council on May 25, 2011 (Bill 19-202) [D.C. Act 19-92].

(May 9, 2000, D.C. Law 13-105, § 26a, as added Mar. 2, 2007, D.C. Law 16-192, § 2142(b), 53 DCR 6899; Mar. 3, 2010, D.C. Law 18-111, § 2241(a), 57 DCR 181; Sept. 14, 2011, D.C. Law 19-21, § 2032, 58 DCR 6226.)

Effect of amendments. — D.C. Law 18-111 rewrote subsec. (b), which had read as follows: “(b) The Authority shall allocate the funds appropriated for the program annually toward project-based and sponsor-based voucher assistance, as described in § 6-227, and tenant-based assistance, as described in § 6-228.”

D.C. Law 19-21 added subsec. (e).

Emergency legislation. — For temporary (90 day) addition, see § 2142(b) of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) addition, see § 2142(b) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) addition, see § 2142(b) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

For temporary (90 day) amendment of section, see § 2241(a) of Fiscal Year 2010 Budget

Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 2241(a) of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 16-192. — For Law 16-192, see notes following § 6-201.

Legislative history of Law 18-111. — Law 18-111, the “Fiscal Year 2010 Budget Support Act of 2009”, was introduced in Council and assigned Bill No. 18-203, which was referred to the Committee on the Whole. The bill was adopted on first and second readings on May 12, 2009, and September 22, 2009, respectively. Signed by the Mayor on December 18, 2009, it was assigned Act No. 18-255 and transmitted to both Houses of Congress for its review. D.C. Law 18-111 became effective on March 3, 2010.

Legislative history of Law 19-21. — Law 19-21, the “Fiscal Year 2012 Budget Support Act of 2011”, was introduced in Council and assigned Bill No. 19-203, which was referred to the Committee of the Whole. The Bill was

adopted on first and second readings on May 25, 2011, and June 14, 2011, respectively. Signed by the Mayor on July 22, 2011, it was assigned Act No. 19-98 and transmitted to both Houses of Congress for its review. D.C. Law 19-21 became effective on September 14, 2011.

Short title. — Short title: Section 2240 of D.C. Law 18-111 provided that subtitle Y of title II of the act may be cited as the “Local Rent Supplement Amendment Act of 2009”.

Short title: Section 2031 of D.C. Law 19-21 provided that subtitle D of title II of the act may be cited as “Rent Supplement Prioritization and Funding Act of 2011”.

Resolutions. — Resolution 18-453, the “District of Columbia Housing Authority Rent Supplement Proposed Rulemaking Emergency Approval Resolution of 2010”, was approved effective April 20, 2010.

§ 6-227. Project-based and sponsor-based voucher assistance.

(a) The funds allocated under the program for project-based and sponsor-based voucher assistance shall be awarded by the Authority pursuant to its Partnership Program For Affordable Housing, except as otherwise provided herein.

(b) The Authority shall promulgate rules to govern the awarding of rent supplement funds through Partnership Program grants, as described in this section, to providers of sponsor-based housing. The Authority shall designate a portion of these funds to be awarded on a priority basis to sponsors of supportive housing for individuals with special needs. The rules may address eligibility, admission, and occupancy criteria, which serve the supportive housing goals of the housing development.

(c) The Authority shall apply its existing Partnership Program rules to govern the awarding of Partnership Program grants for project-based voucher assistance and the continuing eligibility for such grants under this section, except where such rules are inconsistent with this legislation. The Authority shall also apply its existing Partnership Program and Housing Choice Voucher Program rules to govern eligibility, admission, and continuing occupancy by tenants in units receiving assistance under this section, § 6-226, and § 6-228, except if the rules are inconsistent with this section, § 6-226, and § 6-228. The Authority shall promulgate such additional rules as are necessary to ensure that eligibility for tenancy in the units supported by grants under this section is limited to households with gross income at or below 30% of the area median income.

(d) To maintain consistency for households receiving rental housing support, the Authority shall, to the extent possible, given funding resources available in the Rent Supplement Program, continue to fund project-based and sponsor-based grantees at the same level, adjusted for inflation, on an annual basis, unless the Authority determines that a grantee is not meeting the criteria set forth in the rules governing the Partnership Program or is not adhering to other standards set forth by rule by the Authority.

(May 9, 2000, D.C. Law 13-105, § 26b, as added Mar. 2, 2007, D.C. Law 16-192, § 2142(b), 53 DCR 6899.)

Temporary Amendment of Section. — Section 2(b) of D.C. Law 17-382 amended subsec. (c) to read as follows:

“(c)(1) The Authority shall apply its existing Partnership Program rules to govern the awarding of Partnership Program grants for

project-based voucher assistance and the continuing eligibility for those grants under this section, except where the rules are inconsistent with this act.

“(2)(A) For project-based assistance and sponsor-based assistance, except for rules promulgated by the Authority regarding eligibility, admission, and determination of the amount of rental assistance payments pursuant to subparagraph (B) of this paragraph, the Authority shall also apply its existing Partnership Program and Housing Choice Voucher Program rules to govern eligibility, admission, and continuing occupancy by tenants in units receiving assistance under this section, section 26a, and section 26c, except if the rules are inconsistent with this section, section 26a, or section 26c.

“(B) For sponsor-based assistance, the Authority shall promulgate rules to govern eligibility, admission, and determination of the amount of rental assistance payments for units receiving sponsor-based assistance under this section, which eligibility and admission rules will set forth requirements regarding criminal background, citizenship, and residency of tenants.

“(3) The Authority shall promulgate rules as are necessary to ensure that eligibility for tenancy is limited to households with gross income at or below 30% of the area median income in units supported by grants under this section, section 26a, and 26c and to households that have resided in the District for the previous 6

months in units supported by grants under this section.

“(4) Any rules proposed pursuant to this subsection shall be submitted to the Council for a 30-day period of review. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within the 30-day review period, the proposed rules shall be deemed approved.”

Section 4(b) of D.C. Law 17-382 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition, see § 2142(b) of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) addition, see § 2142(b) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) addition, see § 2142(b) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

For temporary (90 day) amendment of section, see § 2(b) of Local Rent Supplement Program Second Emergency Amendment Act of 2008 (D.C. Act 17-684, January 12, 2009, 56 DCR 1111).

Legislative history of Law 16-192. — For Law 16-192, see notes following § 6-201.

§ 6-228. Tenant-based assistance.

(a) The funds allocated for tenant-based assistance shall be administered through the Authority's Housing Choice Voucher Program. Except as provided in this section, tenant-based assistance provided through the Rent Supplement Program shall be subject to the Authority's existing rules, regulations, policies, and procedures for the Housing Choice Voucher Program. Existing rules, regulations, policies, and procedures affecting the Rent Supplement Program shall be submitted for Council review as required by § 6-226.

(b) Eligible families shall be selected from the Authority's Housing Choice Voucher Program waiting list according to rules established by the Authority for selection and admission, with the following additional limitations:

(1) Eligible families shall be extremely low-income; and

(2) The Authority shall develop rules that give preference in awarding a percentage of the vouchers funded under this program to District residents who are homeless applicants with one or more children under 18 years of age. The percentage shall be determined by the Authority and shall be included in the rules adopted for the program.

(May 9, 2000, D.C. Law 13-105, § 26c, as added Mar. 2, 2007, D.C. Law 16-192, § 2142(b), 53 DCR 6899.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Veterans Rental Assistance Temporary Amendment Act of 2008 (D.C. Law 17-189, July 18, 2008, law notification 55 DCR 9767).

Emergency legislation. — For temporary (90 day) addition, see § 2142(b) of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) addition, see § 2142(b) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) addition, see § 2142(b) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

For temporary (90 day) amendment of section, see § 2 of Displaced Veterans Rental Assistance Emergency Amendment Act of 2008 (D.C. Act 17-351, April 17, 2008, 55 DCR 5366).

For temporary (90 day) amendment of section, see § 2 of Veterans Rental Assistance Congressional Review Emergency Act of 2008 (D.C. Act 17-438, July 16, 2008, 55 DCR 8286).

Legislative history of Law 16-192. — For Law 16-192, see notes following § 6-201.

§ 6-229. Capital-based assistance.

Funds remaining in the Rent Supplement Fund at the end of any fiscal year that are not needed by the Authority to satisfy its current contractual obligations for project-based, sponsor-based, or tenant-based assistance, including any rent increase adjustments, shall be allocated for a reserve equal to \$5.88 million plus 2 months of program payment obligations for its then current contractual obligations, with all remaining funds to be allocated as capital gap financing for the construction or rehabilitation of housing units for which project-based or sponsor-based assistance was previously awarded as an operating subsidy. The funding shall be distributed in the form of construction or capital improvement grants. All units constructed or improved with funds allocated pursuant to this section shall comply with all applicable requirements promulgated by the Authority pursuant to §§ 6-226, 6-227, and 6-228.

(May 9, 2000, D.C. Law 13-105, § 26d, as added Mar. 3, 2010, D.C. Law 18-111, § 2241(b), 57 DCR 181.)

Emergency legislation. — For temporary (90 day) addition, see § 2241(b) of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) addition, see

§ 2241(b) of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 18-111. — For Law 18-111, see notes following § 6-226.

Subchapter II. District of Columbia Housing Authority, 1994 [Repealed].

§ 6-251. Definitions. [Repealed].

Repealed.

(Mar. 21, 1995, D.C. Law 10-243, § 3, 42 DCR 91; Mar. 20, 1998, D.C. Law 12-62, § 2(a), 44 DCR 7486; May 9, 2000, D.C. Law 13-105, § 30, 47 DCR 1325.)

Prior Codifications. — 1981 Ed., § 5-121.
Temporary Amendment of Section. —

For temporary (225 day) amendment of section, see § 2(a) of District of Columbia Housing

Authority Police Temporary Amendment Act of 1996 (D.C. Law 11-208, April 9, 1997, law notification 44 DCR 2403).

For temporary (225 day) amendment of section, see § 2(a) of Housing Authority Temporary Amendment Act of 1998 (D.C. Law 12-272, April 27, 1999, law notification 46 DCR 4278).

For temporary (225 day) amendment of section, see § 2(a) of Housing Authority Temporary Amendment Act of 1999 (D.C. Law 13-92, April 12, 2000, law notification 47 DCR 2843).

Emergency legislation. — For temporary amendment of section, see § 2(a) of the District of Columbia Housing Authority Police Emergency Amendment Act of 1996 (D.C. Act 11-357, August 8, 1996, 43 DCR 4628), § 2(a) of the District of Columbia Housing Authority Police Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-417, October 28, 1996, 43 DCR 6080), and § 2(a) of the District of Columbia Housing Authority Police Second Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-470, December 30, 1996, 44 DCR 184).

For temporary amendment of section, see § 2 of the District of Columbia Housing Authority Police Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-67, April 18, 1997, 44 DCR 2617).

For temporary amendment of section, see § 2(a) of the Housing Authority Police Emergency Amendment Act of 1997 (D.C. Act 12-217, November 21, 1997, 44 DCR 7622).

For temporary amendment of section, see § 2(a) of the Housing Authority Police Congressional Recess Emergency Amendment Act of 1998 (D.C. Act 12-289, February 27, 1998, 45 DCR 1743).

For temporary amendment of section, see § 2(a) of the Housing Authority Emergency Amendment Act of 1998 (D.C. Act 12-569, January 12, 1999, 45 DCR 887).

For temporary (90-day) amendment of section, see § 2(a) of the Housing Authority Emergency Amendment Act of 1999 (D.C. Act 13-200, December 1, 1999, 46 DCR 10448).

For temporary (90-day) repeal of sections, see § 29 of the District of Columbia Housing Authority Emergency Act of 1999 (D.C. Act 13-259, February 9, 2000, 47 DCR 1129).

For temporary (90-day) amendment of section, see § 2(a) of the Housing Authority Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-274, March 7, 2000, 47 DCR 2008).

For temporary (90-day) repeal of sections, see § 29 of the District of Columbia Housing Authority Congressional Review Emergency Act of 2000 (D.C. Act 13-346, June 5, 2000, 47 DCR 4980).

Legislative history of Law 10-243. — Law 10-243, the “District of Columbia Housing Authority Act of 1994,” was introduced in Council and assigned Bill No. 10-671, which was referred to the Committee on Housing. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 28, 1994, it was assigned Act No. 10-388 and transmitted to both Houses of Congress for its review. D.C. Law 10-243 became effective on March 21, 1995.

Legislative history of Law 12-62. — Law 12-62, the “Housing Authority Police Amendment Act of 1997,” was introduced in Council and assigned Bill No. 12-43, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on October 21, 1997, and November 4, 1997, respectively. Signed by the Mayor on November 14, 1997, it was assigned Act No. 12-198 and transmitted to both Houses of Congress for its review. D.C. Law 12-62 became effective on March 20, 1998.

Legislative history of Law 13-105. — Law 13-105, the “District of Columbia Housing Authority Act of 1999,” was introduced in Council and assigned Bill No. 13-169, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 7, 1999, and December 21, 1999, respectively. Signed by the Mayor on January 18, 2000, it was assigned Act No. 13-254 and transmitted to both Houses of Congress for its review. D.C. Law 13-105 became effective on May 9, 2000.

Editor’s notes. — D.C. Law 10-243, § 2 (42 DCR 91), eff. March 21, 1995, provided:

“Sec. 2. Purpose.

“(a) The Council of the District of Columbia hereby finds: (1) That the quality of life for those citizens who require housing assistance is inextricably linked to safe and affordable housing; (2) That quality public housing sustains and creates opportunities for self-sufficiency, and social and economic improvement; (3) That the inability of some residents to provide shelter for themselves and their families compels them to live in unsafe and unhealthy conditions; and (4) That these conditions are detrimental to the health and welfare of District residents and adversely affect the economy of the District.

“(b) The Council determines that it is necessary and in the public interest to create an independent housing authority in the District of Columbia and to confer and vest in the authority all powers necessary or appropriate in order that it may engage in providing and maintaining quality public housing in the District of Columbia.”

§ 6-252. Establishment of the District of Columbia Housing Authority. [Repealed].

Repealed.

(Mar. 21, 1995, D.C. Law 10-243, § 4, 42 DCR 91; May 9, 2000, D.C. Law 13-105, § 30, 47 DCR 1325.)

Prior Codifications. — 1981 Ed., § 5-122.

Emergency legislation. — For temporary (90-day) repeal of sections, see § 29 of the District of Columbia Housing Authority Emergency Act of 1999 (D.C. Act 13-259, February 9, 2000, 47 DCR 1129).

For temporary (90-day) repeal of sections, see § 29 of the District of Columbia Housing Authority Congressional Review Emergency Act of 2000 (D.C. Act 13-346, June 5, 2000, 47 DCR 4980).

Legislative history of Law 10-243. — For legislative history of D.C. Law 10-243, see Historical and Statutory Notes following § 6-251.

Legislative history of Law 13-105. — Law

13-105, the “District of Columbia Housing Authority Act of 1999,” was introduced in Council and assigned Bill No. 13-169, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 7, 1999, and December 21, 1999, respectively. Signed by the Mayor on January 18, 2000, it was assigned Act No. 13-254 and transmitted to both Houses of Congress for its review. D.C. Law 13-105 became effective on May 9, 2000.

Editor’s notes. — Purpose of Law 10-243: See Historical and Statutory Notes following § 6-251.

§ 6-253. Dissolution of the Department of Public and Assisted Housing. [Repealed].

Repealed.

(Mar. 21, 1995, D.C. Law 10-243, § 5, 42 DCR 91; May 9, 2000, D.C. Law 13-105, § 30, 47 DCR 1325.)

Prior Codifications. — 1981 Ed., § 5-123.

Emergency legislation. — For temporary (90-day) repeal of sections, see § 29 of the District of Columbia Housing Authority Emergency Act of 1999 (D.C. Act 13-259, February 9, 2000, 47 DCR 1129).

For temporary (90-day) repeal of sections, see § 29 of the District of Columbia Housing Authority Congressional Review Emergency Act of 2000 (D.C. Act 13-346, June 5, 2000, 47 DCR 4980).

Legislative history of Law 10-243. — For legislative history of D.C. Law 10-243, see Historical and Statutory Notes following § 6-251.

Legislative history of Law 13-105. — Law

13-105, the “District of Columbia Housing Authority Act of 1999,” was introduced in Council and assigned Bill No. 13-169, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 7, 1999, and December 21, 1999, respectively. Signed by the Mayor on January 18, 2000, it was assigned Act No. 13-254 and transmitted to both Houses of Congress for its review. D.C. Law 13-105 became effective on May 9, 2000.

Editor’s notes. — Purpose of Law 10-243: See Historical and Statutory Notes following § 6-251.

§ 6-254. Board of Commissioners of the District of Columbia Housing Authority. [Repealed].

Repealed.

(Mar. 21, 1995, D.C. Law 10-243, § 6, 42 DCR 91; Apr. 18, 1996, D.C. Law 11-110, § 11(a), 43 DCR 530; May 9, 2000, D.C. Law 13-105, § 30, 47 DCR 1325.)

Prior Codifications. — 1981 Ed., § 5-124.

Emergency legislation. — For temporary (90-day) repeal of sections, see § 29 of the District of Columbia Housing Authority Emergency Act of 1999 (D.C. Act 13-259, February 9, 2000, 47 DCR 1129).

For temporary (90-day) repeal of sections, see § 29 of the District of Columbia Housing Authority Congressional Review Emergency Act of 2000 (D.C. Act 13-346, June 5, 2000, 47 DCR 4980).

Legislative history of Law 10-243. — For legislative history of D.C. Law 10-243, see Historical and Statutory Notes following § 6-251.

Legislative history of Law 11-110. — Law 11-110, the “Technical Amendments Acts of 1996,” was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5,

1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

Legislative history of Law 13-105. — Law 13-105, the “District of Columbia Housing Authority Act of 1999,” was introduced in Council and assigned Bill No. 13-169, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 7, 1999, and December 21, 1999, respectively. Signed by the Mayor on January 18, 2000, it was assigned Act No. 13-254 and transmitted to both Houses of Congress for its review. D.C. Law 13-105 became effective on May 9, 2000.

Editor’s notes. — Purpose of Law 10-243: See Historical and Statutory Notes following § 6-251.

§ 6-255. Executive Director. [Repealed].

Repealed.

(Mar. 21, 1995, D.C. Law 10-243, § 7, 42 DCR 91; May 9, 2000, D.C. Law 13-105, § 30, 47 DCR 1325.)

Prior Codifications. — 1981 Ed., § 5-125.

Emergency legislation. — For temporary (90-day) repeal of sections, see § 29 of the District of Columbia Housing Authority Emergency Act of 1999 (D.C. Act 13-259, February 9, 2000, 47 DCR 1129).

For temporary (90-day) repeal of sections, see § 29 of the District of Columbia Housing Authority Congressional Review Emergency Act of 2000 (D.C. Act 13-346, June 5, 2000, 47 DCR 4980).

Legislative history of Law 10-243. — For legislative history of D.C. Law 10-243, see Historical and Statutory Notes following § 6-251.

Legislative history of Law 13-105. — Law

13-105, the “District of Columbia Housing Authority Act of 1999,” was introduced in Council and assigned Bill No. 13-169, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 7, 1999, and December 21, 1999, respectively. Signed by the Mayor on January 18, 2000, it was assigned Act No. 13-254 and transmitted to both Houses of Congress for its review. D.C. Law 13-105 became effective on May 9, 2000.

Editor’s notes. — Purpose of Law 10-243: See Historical and Statutory Notes following § 6-251.

§ 6-256. Resident Council Advisory Board and tenant election of members of resident councils and Resident Council Advisory Board. [Repealed].

Repealed.

(Mar. 21, 1995, D.C. Law 10-243, § 8, 42 DCR 91; Apr. 29, 1998, D.C. Law 12-86, § 401(f), 45 DCR 1172.)

Prior Codifications. — 1981 Ed., § 5-126.

Emergency legislation. — For temporary (90-day) repeal of sections, see § 29 of the District of Columbia Housing Authority Emergency Act of 1999 (D.C. Act 13-259, February 9, 2000, 47 DCR 1129).

For temporary (90-day) repeal of sections, see § 29 of the District of Columbia Housing Authority Congressional Review Emergency Act of 2000 (D.C. Act 13-346, June 5, 2000, 47 DCR 4980).

Legislative history of Law 12-86. — Law

12-86, the “Omnibus Regulatory Reform Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-458, which was referred to the Committee on Public Works and the Environment and the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 19, 1997, and January 6, 1998, respectively. Signed by the Mayor on January 21, 1998, it was assigned Act No. 12-256 and transmitted to both Houses of Congress for its review. D.C. Law 12-86 became effective on April 29, 1998.

Legislative history of Law 13-105. — Law 13-105, the “District of Columbia Housing Au-

thority Act of 1999,” was introduced in Council and assigned Bill No. 13-169, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 7, 1999, and December 21, 1999, respectively. Signed by the Mayor on January 18, 2000, it was assigned Act No. 13-254 and transmitted to both Houses of Congress for its review. D.C. Law 13-105 became effective on May 9, 2000.

Editor’s notes. — Purpose of Law 10-243: See Historical and Statutory Notes following § 6-251.

§ 6-257. Social services teams in public housing. [Repealed].

Repealed.

(Mar. 21, 1995, D.C. Law 10-243, § 9, 42 DCR 91; May 9, 2000, D.C. Law 13-105, § 30, 47 DCR 1325.)

Prior Codifications. — 1981 Ed., § 5-127.

Emergency legislation. — For temporary (90-day) repeal of sections, see § 29 of the District of Columbia Housing Authority Emergency Act of 1999 (D.C. Act 13-259, February 9, 2000, 47 DCR 1129).

For temporary (90-day) repeal of sections, see § 29 of the District of Columbia Housing Authority Congressional Review Emergency Act of 2000 (D.C. Act 13-346, June 5, 2000, 47 DCR 4980).

Legislative history of Law 10-243. — For legislative history of D.C. Law 10-243, see Historical and Statutory Notes following § 6-251.

Legislative history of Law 13-105. — Law

13-105, the “District of Columbia Housing Authority Act of 1999,” was introduced in Council and assigned Bill No. 13-169, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 7, 1999, and December 21, 1999, respectively. Signed by the Mayor on January 18, 2000, it was assigned Act No. 13-254 and transmitted to both Houses of Congress for its review. D.C. Law 13-105 became effective on May 9, 2000.

Editor’s notes. — Purpose of Law 10-243: See Historical and Statutory Notes following § 6-251.

§ 6-258. Transfer of DPAH’s Employees to the Authority. [Repealed].

Repealed.

(Mar. 21, 1995, D.C. Law 10-243, § 10, 42 DCR 91; May 9, 2000, D.C. Law 13-105, § 30, 47 DCR 1325.)

Prior Codifications. — 1981 Ed., § 5-128.

Emergency legislation. — For temporary (90-day) repeal of sections, see § 29 of the District of Columbia Housing Authority Emergency Act of 1999 (D.C. Act 13-259, February 9, 2000, 47 DCR 1129).

For temporary (90-day) repeal of sections, see § 29 of the District of Columbia Housing Authority Congressional Review Emergency Act of 2000 (D.C. Act 13-346, June 5, 2000, 47 DCR 4980).

Legislative history of Law 10-243. — For

legislative history of D.C. Law 10-243, see Historical and Statutory Notes following § 6-251.

Legislative history of Law 13-105. — Law 13-105, the “District of Columbia Housing Authority Act of 1999,” was introduced in Council and assigned Bill No. 13-169, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 7, 1999, and December 21, 1999, respectively. Signed by the Mayor on January 18, 2000, it was assigned Act No. 13-254 and transmitted to both Houses

of Congress for its review. D.C. Law 13-105 became effective on May 9, 2000.

Editor's notes. — Purpose of Law 10-243:

See Historical and Statutory Notes following § 6-251.

§ 6-258.01. District of Columbia Housing Authority Police Force. [Repealed].

Repealed.

(March 21, 1995, D.C. Law 10-243, § 10a, as added Mar. 20, 1998, D.C. Law 12-62, § 2(b), 44 DCR 7486; May 9, 2000, D.C. Law 13-105, § 30, 47 DCR 1325.)

Prior Codifications. — 1981 Ed., § 5-128.1.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(b) of Housing Authority Temporary Amendment Act of 1998 (D.C. Law 12-272, April 27, 1999, law notification 46 DCR 4278).

For temporary (225 day) amendment of section, see § 2(b) of Housing Authority Temporary Amendment Act of 1999 (D.C. Law 13-92, April 12, 2000, law notification 47 DCR 2843).

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 2(b) of District of Columbia Housing Authority Police Temporary Amendment Act of 1996 (D.C. Law 11-208, April 9, 1997, law notification 44 DCR 2403).

Emergency legislation. — For temporary addition of section, see § 2(b) of the District of Columbia Housing Authority Police Emergency Amendment Act of 1996 (D.C. Act 11-357, August 8, 1996, 43 DCR 4628), § 2(b) of the District of Columbia Housing Authority Police Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-417, October 28, 1996, 43 DCR 6080), § 2(b) of the District of Columbia Housing Authority Police Second Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-470, December 30, 1996, 44 DCR 184), § 2(b) of the District of Columbia Housing Authority Police Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-67, Apr. 18, 1997, 44 DCR 2617), and § 2(b) of the Housing Authority Police Emergency Amendment Act of 1997 (D.C. Act 12-217, November 21, 1997, 44 DCR 7622).

For temporary addition of section, see § 2(b) of the Housing Authority Police Congressional Recess Emergency Amendment Act of 1998

(D.C. Act 12-289, February 27, 1998, 45 DCR 1743).

For temporary amendment of section, see § 2(b) of the Housing Authority Emergency Amendment Act of 1998 (D.C. Act 12-569, January 12, 1999, 45 DCR 887).

For temporary (90-day) repeal of sections, see § 29 of the District of Columbia Housing Authority Emergency Act of 1999 (D.C. Act 13-259, February 9, 2000, 47 DCR 1129).

For temporary (90-day) repeal of sections, see § 29 of the District of Columbia Housing Authority Congressional Review Emergency Act of 2000 (D.C. Act 13-346, June 5, 2000, 47 DCR 4980).

For temporary (90-day) amendment of section, see § 2(b) of the Housing Authority Emergency Amendment Act of 1999 (D.C. Act 13-200, December 1, 1999, 46 DCR 10448).

For temporary (90-day) amendment of section, see § 2(b) of the Housing Authority Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-274, March 7, 2000, 47 DCR 2008).

Legislative history of Law 12-62. — For legislative history of D.C. Law 12-62, see Historical and Statutory Notes following § 6-251.

Legislative history of Law 13-105. — Law 13-105, the "District of Columbia Housing Authority Act of 1999," was introduced in Council and assigned Bill No. 13-169, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 7, 1999, and December 21, 1999, respectively. Signed by the Mayor on January 18, 2000, it was assigned Act No. 13-254 and transmitted to both Houses of Congress for its review. D.C. Law 13-105 became effective on May 9, 2000.

§ 6-259. Procurement. [Repealed].

Repealed.

(Mar. 21, 1995, D.C. Law 10-243, § 11, 42 DCR 91; May 9, 2000, D.C. Law 13-105, § 30, 47 DCR 1325.)

Prior Codifications. — 1981 Ed., § 5-129.

Emergency legislation. — For temporary (90-day) repeal of sections, see § 29 of the District of Columbia Housing Authority Emergency Act of 1999 (D.C. Act 13-259, February 9, 2000, 47 DCR 1129).

For temporary (90-day) repeal of sections, see § 29 of the District of Columbia Housing Authority Congressional Review Emergency Act of 2000 (D.C. Act 13-346, June 5, 2000, 47 DCR 4980).

Legislative history of Law 10-243. — For legislative history of D.C. Law 10-243, see Historical and Statutory Notes following § 6-251.

Legislative history of Law 13-105. — Law

13-105, the “District of Columbia Housing Authority Act of 1999,” was introduced in Council and assigned Bill No. 13-169, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 7, 1999, and December 21, 1999, respectively. Signed by the Mayor on January 18, 2000, it was assigned Act No. 13-254 and transmitted to both Houses of Congress for its review. D.C. Law 13-105 became effective on May 9, 2000.

Editor’s notes. — Purpose of Law 10-243: See Historical and Statutory Notes following § 6-251.

§ 6-260. Conflict of interest. [Repealed].

Repealed.

(Mar. 21, 1995, D.C. Law 10-243, § 12, 42 DCR 91; May 9, 2000, D.C. Law 13-105, § 30, 47 DCR 1325.)

Prior Codifications. — 1981 Ed., § 5-130.

Emergency legislation. — For temporary (90-day) repeal of sections, see § 29 of the District of Columbia Housing Authority Emergency Act of 1999 (D.C. Act 13-259, February 9, 2000, 47 DCR 1129).

For temporary (90-day) repeal of sections, see § 29 of the District of Columbia Housing Authority Congressional Review Emergency Act of 2000 (D.C. Act 13-346, June 5, 2000, 47 DCR 4980).

Legislative history of Law 10-243. — For legislative history of D.C. Law 10-243, see Historical and Statutory Notes following § 6-251.

Legislative history of Law 13-105. — Law

13-105, the “District of Columbia Housing Authority Act of 1999,” was introduced in Council and assigned Bill No. 13-169, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 7, 1999, and December 21, 1999, respectively. Signed by the Mayor on January 18, 2000, it was assigned Act No. 13-254 and transmitted to both Houses of Congress for its review. D.C. Law 13-105 became effective on May 9, 2000.

Editor’s notes. — Purpose of Law 10-243: See Historical and Statutory Notes following § 6-251.

§ 6-261. Local law. [Repealed].

Repealed.

(Mar. 21, 1995, D.C. Law 10-243, § 13, 42 DCR 91; Apr. 9, 1997, D.C. Law 11-255, § 12, 44 DCR 1271; May 9, 2000, D.C. Law 13-105, § 30, 47 DCR 1325.)

Prior Codifications. — 1981 Ed., § 5-131.

Emergency legislation. — For temporary (90-day) repeal of sections, see § 29 of the District of Columbia Housing Authority Emergency Act of 1999 (D.C. Act 13-259, February 9, 2000, 47 DCR 1129).

For temporary (90-day) repeal of sections, see § 29 of the District of Columbia Housing Authority Congressional Review Emergency Act of 2000 (D.C. Act 13-346, June 5, 2000, 47 DCR 4980).

Legislative history of Law 10-243. — For legislative history of D.C. Law 10-243, see Historical and Statutory Notes following § 6-251.

Legislative history of Law 11-255. — Law 11-255, the “Second Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Legislative history of Law 13-105. — Law 13-105, the “District of Columbia Housing Authority Act of 1999,” was introduced in Council

and assigned Bill No. 13-169, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 7, 1999, and December 21, 1999, respectively. Signed by the Mayor on January 18, 2000, it was assigned

Act No. 13-254 and transmitted to both Houses of Congress for its review. D.C. Law 13-105 became effective on May 9, 2000.

Editor's notes. — Purpose of Law 10-243: See Historical and Statutory Notes following § 6-251.

§ 6-262. Tax exemption. [Repealed].

Repealed.

(Mar. 21, 1995, D.C. Law 10-243, § 14, 42 DCR 91; Apr. 18, 1996, D.C. Law 11-110 § 11(b), 43 DCR 50; May 9, 2000, D.C. Law 13-105, § 30, 47 DCR 1325.)

Prior Codifications. — 1981 Ed., § 5-132.

Emergency legislation. — For temporary (90-day) repeal of sections, see § 29 of the District of Columbia Housing Authority Emergency Act of 1999 (D.C. Act 13-259, February 9, 2000, 47 DCR 1129).

For temporary (90-day) repeal of sections, see § 29 of the District of Columbia Housing Authority Congressional Review Emergency Act of 2000 (D.C. Act 13-346, June 5, 2000, 47 DCR 4980).

Legislative history of Law 10-243. — For legislative history of D.C. Law 10-243, see Historical and Statutory Notes following § 6-251.

Legislative history of Law 11-110. — For legislative history of D.C. Law 11-110, see Historical and Statutory Notes following § 6-254.

Legislative history of Law 13-105. — Law 13-105, the "District of Columbia Housing Authority Act of 1999," was introduced in Council and assigned Bill No. 13-169, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 7, 1999, and December 21, 1999, respectively. Signed by the Mayor on January 18, 2000, it was assigned Act No. 13-254 and transmitted to both Houses of Congress for its review. D.C. Law 13-105 became effective on May 9, 2000.

Editor's notes. — Purpose of Law 10-243: See Historical and Statutory Notes following § 6-251.

§ 6-263. Disposition of assets on dissolution. [Repealed].

Repealed.

(Mar. 21, 1995, D.C. Law 10-243, § 15, 42 DCR 91; May 9, 2000, D.C. Law 13-105, § 30, 47 DCR 1325.)

Prior Codifications. — 1981 Ed., § 5-133.

Emergency legislation. — For temporary (90-day) repeal of sections, see § 29 of the District of Columbia Housing Authority Emergency Act of 1999 (D.C. Act 13-259, February 9, 2000, 47 DCR 1129).

For temporary (90-day) repeal of sections, see § 29 of the District of Columbia Housing Authority Congressional Review Emergency Act of 2000 (D.C. Act 13-346, June 5, 2000, 47 DCR 4980).

Legislative history of Law 10-243. — For legislative history of D.C. Law 10-243, see Historical and Statutory Notes following § 6-251.

Legislative history of Law 13-105. — Law

13-105, the "District of Columbia Housing Authority Act of 1999," was introduced in Council and assigned Bill No. 13-169, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 7, 1999, and December 21, 1999, respectively. Signed by the Mayor on January 18, 2000, it was assigned Act No. 13-254 and transmitted to both Houses of Congress for its review. D.C. Law 13-105 became effective on May 9, 2000.

Editor's notes. — Purpose of Law 10-243: See Historical and Statutory Notes following § 6-251.

CHAPTER 3. HOUSING REDEVELOPMENT.

Subchapter I. Housing Redevelopment

Sec.

6-301.01 to 6-301.20. [Repealed].

Subchapter II. Neighborhood Development

6-311.01. Neighborhood development programs.

Subchapter III. Transfer to Agency of Certain Property near Maine Avenue

6-321.01. Authorized.

6-321.02. Determination of necessity.

6-321.03. Transfer of jurisdiction to Agency.

6-321.04. Lease of property by Agency; other transfers limited; priority of owner of displaced business concern.

6-321.05. [Repealed].

6-321.06. Council not required to transfer property needed for municipal purposes.

6-321.07. Not considered a local grant-in-aid.

6-321.08. Definitions.

Subchapter IV. Relocation Services

PART A

General

6-331.01. Relocation services for displaced persons and concerns; preference in vacancies in government housing; housing surveys.

Sec.

6-331.02. Determination of availability of housing for displaced persons.

6-331.03. District of Columbia Relocation Assistance Office.

6-331.04. Regulations to carry out part.

PART B

Persons Displaced by District Programs, Washington Metropolitan Area Transit Authority, or Condominium Conversion

6-333.01. Relocation payments and assistance for persons displaced by District programs or by Washington Metropolitan Area Transit Authority; relocation services for persons displaced by condominium or cooperative conversion, or by rehabilitation, demolition, or discontinuance from housing use.

6-333.02. Relocation advisory services for persons displaced by condominium conversion, or by rehabilitation, demolition, or discontinuance from housing use of building.

Subchapter V. Properties near Maryland Avenue and Virginia Avenue

6-341.01. Transfer to Agency authorized.

6-341.02. Lease or sale by Agency authorized.

6-341.03. Transfer of rights-of-way by Agency to District authorized.

6-341.04. Transfer not a local grant-in-aid.

6-341.05. Definitions.

Subchapter I. Housing Redevelopment.

§ 6-301.01. Purpose. [Repealed].

Repealed.

(Aug. 2, 1946, 60 Stat. 790, ch. 736, § 2; Nov. 13, 2003, D.C. Law 15-39, § 232(a), 50 DCR 5668.)

Prior Codifications. — 1981 Ed., § 5-801. 1973 Ed., § 5-701.

Emergency legislation. — For temporary (90 day) repeal of section, see § 232(a) of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) repeal of section, see § 232(a) of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

Legislative history of Law 15-39. — Law 15-39, the “Fiscal Year 2004 Budget Support

Act of 2003”, was introduced in Council and assigned Bill No. 15-218, which was referred to Committee on Whole. The Bill was adopted on first and second readings on May 6, 2003, and June 3, 2003, respectively. Signed by the Mayor on June 20, 2003, it was assigned Act No. 15-106 and transmitted to both Houses of Congress for its review. D.C. Law 15-39 became effective on November 13, 2003.

Short title. — Short title of subtitle D of title II of Law 15-39: Section 231 of D.C. Law 15-39 provided that subtitle D of title II of the act may be cited as the Redevelopment Act Amendments Act of 2003.

Editor's notes. — Transfer of powers, duties, and responsibilities from Board of Directors of Redevelopment Land Agency: Section 30(a) of D.C. Law 12-144 provided for the transfer of the powers, duties, and responsibilities

of the Board of Directors of the Redevelopment Land Agency to the Board of Directors of the National Capital Revitalization Corporation, and for the abolition of the Board of Directors of the Redevelopment Land Agency.

§ 6-301.02. Definitions. [Repealed].

Repealed.

(Aug. 2, 1946, 60 Stat. 791, ch. 736, § 3; Aug. 28, 1958, 72 Stat. 1102, Pub. L. 85-854, § 1(1-3); Aug. 17, 1982, D.C. Law 4-140, § 2(a), 29 DCR 2862; Oct. 1, 2002, D.C. Law 14-188, § 3(1), 49 DCR 6516; Nov. 13, 2003, D.C. Law 15-39, § 232(b), 50 DCR 5668; Mar. 25, 2009, D.C. Law 17-353, § 303(a), 56 DCR 1117.)

Prior Codifications. — 1981 Ed., § 5-802. 1973 Ed., § 5-702.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 9(a)(1) of the Redevelopment Land Agency-RLA Revitalization Corporation Transfer Temporary Act of 2001 (D.C. Law 14-66, Feb. 27, 2002, law notification 49 DCR 2276).

Emergency legislation. — For temporary (90 day) amendment of section, see § 9(a)(1), (b) of Redevelopment Land Agency-RLA Revitalization Corporate Transfer Congressional Review Emergency Act of 2002 (D.C. Act 14-259, January 30, 2002, 49 DCR 1424).

For temporary (90 day) amendment of section, see § 232(b) of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) amendment of section, see § 232(b) of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

Legislative history of Law 4-140. — Law 4-140, the "Redevelopment Land Agency Disposition Review Act of 1982," was introduced in Council and assigned Bill No. 4-319, which was referred to the Committee on Housing and Economic Affairs. The Bill was adopted on first and second readings on April 6, 1982, and May 11, 1982, respectively. Disapproved by the Mayor on June 4, 1982, it was assigned Act No. 4-206 and transmitted to both Houses of Congress for its review.

Legislative history of Law 14-188. — Law 14-188, the "RLA Revitalization Corporation Amendment Act of 2002," was introduced in Council and assigned Bill No. 14-401, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on May 7, 2002, and June 4,

2002, respectively. Signed by the Mayor on June 25, 2002, it was assigned Act No. 14-398 and transmitted to both Houses of Congress for its review. D.C. Law 14-188 became effective on October 1, 2002.

Legislative history of Law 15-39. — For Law 15-39, see notes following § 6-301.01.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 6-201.

Transfer of Functions. — "National Capital Planning Commission" was substituted for "National Capital Park and Planning Commission" in paragraph (10) of this section in view of the Act of June 6, 1924, ch. 270, § 9, as added by the Act of July 19, 1952, 66 Stat. 790, ch. 949, § 1, which transferred the functions, powers, and duties of the National Capital Park and Planning Commission to the National Capital Planning Commission.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 6-301.03. District of Columbia Redevelopment Land Agency — Established; composition; appointment; Chairman; term of office; vacancies; compensation; corporate powers; procedures for disposition of claims; facilities donated as local noncash grant-in-aid; maintenance of rental property; waiver of special assessments. [Repealed].

Repealed.

(Aug. 2, 1946, 60 Stat. 793, ch. 736, § 4; Dec. 24, 1973, 87 Stat. 778, Pub. L. 93-198, title II, § 201(a)-(c); May 10, 1989, D.C. Law 7-231, § 18, 36 DCR 492; Sept. 11, 1998, D.C. Law 12-144, § 31(a), 45 DCR 3747; Oct. 1, 2002, D.C. Law 14-188, § 3(2), 49 DCR 6516.)

Prior Codifications. — 1981 Ed., § 5-803. 1973 Ed., § 5-703.

Temporary Repeal of Section. — For temporary (225 day) repeal of section, see § 9(a)(2) of the Redevelopment Land Agency-RLA Revitalization Corporation Transfer Temporary Act of 2001 (D.C. Law 14-66, Feb. 27, 2002, law notification 49 DCR 2276).

Emergency legislation. — For temporary (90 day) amendment of section, see § 9(a)(1), (b) of Redevelopment Land Agency-RLA Revitalization Corporate Transfer Congressional Review Emergency Act of 2002 (D.C. Act 14-259, January 30, 2002, 49 DCR 1424).

For purported temporary (90 day) repeal of section, see § 232(c) of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For purported temporary (90 day) repeal of section, see § 232(c) of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

Legislative history of Law 7-231. — Law 7-231, the “Technical Amendments Act of 1988,” was introduced in Council and assigned Bill No. 7-586, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 29, 1988, and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-285 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-144. — Law 12-144, the “National Capital Revitalization Corporation Act of 1998,” was introduced in Council and assigned Bill No. 12-514, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on March 3, 1998 and April 7, 1998, respectively. Signed by the Mayor on May

5, 1998, it was assigned Act No. 12-355 and transmitted to both Houses of Congress for its review. D.C. Law 12-144 became effective September 11, 1998.

Legislative history of Law 14-188. — For Law 14-188, see notes following § 6-301.02.

Legislative history of Law 15-39. — For Law 15-39, see notes following § 6-301.01.

Effective date. — Section 33(b)(1) of D.C. Law 12-144 provided that § 31(a) shall take effect on the latter of: (A) September 11, 1998; or (B) the Dates determined by the Board, but not later than one year after the initial meeting of the Board.

Editor's notes. — Compensation for board members of Agency: Section 120(c) of Pub. L. 103-127, 107 Stat. 1346, the District of Columbia Appropriations Act, 1994, provided that notwithstanding subsection (a) of this section, the Board of Directors of the District of Columbia Redevelopment Land Agency shall be paid, during any fiscal year, a per diem compensation at a rate established by the Mayor.

D.C. Law 14-188 repealed this section on a permanent basis. D.C. Law 15-39 also purported to repeal this section. The repeal by D.C. Law 15-39 was ineffective.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished

the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia,

respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 6-301.04. District of Columbia Redevelopment Land Agency — Power to acquire and assemble real property; condemnation; utility facilities. [Repealed].

Repealed.

(Aug. 2, 1946, 60 Stat. 793, ch. 736, § 5; July 29, 1970, 84 Stat. 587, Pub. L. 91-358, title I, § 166(b); Oct. 14, 1972, 86 Stat. 812, Pub. L. 92-495, § 2; Dec. 24, 1973, 87 Stat. 779, Pub. L. 93-198, title II, § 201(d); May 9, 2000, D.C. Law 13-107, § 302, 47 DCR 1091; Nov. 13, 2003, D.C. Law 15-39, § 232(d), 50 DCR 5668; Mar. 25, 2009, D.C. Law 17-353, § 303(b), 56 DCR 1117.)

Prior Codifications. — 1981 Ed., § 5-804. 1973 Ed., § 5-704.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 10 of Prevention of Unauthorized Switching of Customer Natural Gas Accounts Temporary Act of 2001 (D.C. Law 14-13, July 10, 2001, law notification 48 DCR 6589).

Emergency legislation. — For temporary (90 day) amendment of section, see § 232(d) of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) amendment of section, see § 232(d) of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

Legislative history of Law 13-107. — Law 13-107, the “Retail Electric Competition and

Consumer Protection Act of 1999,” was introduced in Council and assigned Bill No. 13-284, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 7, 1999, and December 21, 1999, respectively. Signed by the Mayor on January 18, 2000, it was assigned Act No. 13-256 and transmitted to both Houses of Congress for its review. D.C. Law 13-107 became effective on May 9, 2000.

Legislative history of Law 15-39. — For Law 15-39, see notes following § 6-301.01.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 6-201.

Editor’s notes. — Transfer of United States property: Act of September 26, 1978, 92 Stat. 749, Pub. L. 95-385, provided for the transfer of certain United States property to the District of Columbia Redevelopment Land Agency.

§ 6-301.05. Comprehensive plan; project area redevelopment plans; Shaw Junior High School. [Repealed].

Repealed.

(Aug. 2, 1946, 60 Stat. 794, ch. 736, § 6; Sept. 12, 1966, 80 Stat. 758, Pub. L. 89-569, § 1; Apr. 10, 1984, D.C. Law 5-76, § 5, 31 DCR 1049; Nov. 13, 2003, D.C. Law 15-39, § 232(e), 50 DCR 5668.)

Prior Codifications. — 1981 Ed., § 5-805. 1973 Ed., § 5-705.

Emergency legislation. — For temporary (90 day) repeal of section, see § 232(e) of Fiscal Year 2004 Budget Support Emergency Act of

2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) repeal of section, see § 232(e) of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003

(D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

Legislative history of Law 5-76. — Law 5-76, the “D.C. Comprehensive Plan Act of 1984,” was introduced in Council and assigned Bill No. 5-282, which was referred to the Committee on the Whole. The Bill was adopted on first and second readings on January 17, 1984, and January 31, 1984, respectively. Signed by the Mayor on February 23, 1984, it was assigned Act No. 5-112 and transmitted to both Houses of Congress for its review.

Legislative history of Law 15-39. — For Law 15-39, see notes following § 6-301.01.

Editor’s notes. — District of Columbia Comprehensive Plan of 1984: Section 3 of D.C. Law 5-76 sets forth titles I through X adopted by the Council of the District of Columbia entitled “The District of Columbia Comprehensive Plan of 1984,” and was reprinted in its entirety in 31 DCR 1049 and is contained in the 10 DCMR compilation. On April 5, 1984, the National Capital Planning Commission adopted a resolution finding that “the District elements adopted and amended by the Council by D.C. Act 5-112 do not have a negative impact on the interests or functions of the Federal Establishment in the National Capital.”

Section 2 of D.C. Law 5-187 added a new title XI to the District of Columbia Comprehensive Plan of 1984 adopted by D.C. Law 5-76. D.C. Law 5-187 was reprinted in its entirety in 32 DCR 873. On March 7, 1985, the National Capital Planning Commission adopted a resolution finding that “the District elements adopted and amended by the Council by Act 5-252 do not have a negative impact on the interests or functions of the Federal Establishment in the National Capital.”

Modifications of Urban Renewal Plan for the Northeast Urban Renewal Area, Project No. 1, approved: Pursuant to Resolution 7-226, the “Urban Renewal Plan for the Northeast Urban Renewal Area, Project No. 1, First Modification Approval Resolution of 1988”, effective March 15, 1988, the Council approved the proposed modifications of the Urban Renewal Plan for the Northeast Urban Renewal Area, Project No. 1, as adopted by the National Capital Planning Commission on November 5, 1987.

Modifications of Urban Renewal Plan for the Southwest Urban Renewal Area, Project C, approved: Pursuant to Resolution 7-273, the “Urban Renewal Plan for the Southwest Urban Renewal Area, Project C, First Modification Approval Resolution of 1988,” effective June 14, 1988, the Council approved the proposed modifications of the Urban Renewal Plan for the Southwest Urban Renewal Area, Project C, Ward 2, as adopted by the National Capital Planning Commission on January 7, 1988.

Modifications of Urban Renewal Plan for the Northeast Urban Renewal Area, Project No. 1,

approved: Pursuant to Resolution 7-274, the “Urban Renewal Plan for the Northeast Urban Renewal Area, Project No. 1, First Modification Approval Resolution of 1988; effective June 14, 1988, the Council approved the proposed modifications of the Urban Renewal Plan for the Northeast Urban Renewal Area, Project No. 1, as adopted by the National Capital Planning Commission on January 7, 1988.

Modification of Urban Renewal Plan for 14th Street Urban Renewal Area approved: Pursuant to Resolution 7-353, the “Urban Renewal Plan for the 14th Street Urban Renewal Area, First Modification Approval Resolution of 1988”, effective November 29, 1988, the Council approved the proposed modifications of the Urban Renewal Plan for the 14th Street Urban Renewal Area, as adopted by the National Capital Planning Commission on April 4, 1985.

Modification of Urban Renewal Plan for Downtown Urban Renewal Area approved: Pursuant to Resolution 7-354, the “Urban Renewal Plan for the Downtown Urban Renewal Area, First Modification Approval Resolution of 1988”, effective November 29, 1988, the Council approved the proposed modifications of the Urban Renewal Plan for the Downtown Renewal Area, as adopted by the National Capital Planning Commission on October 1, 1986.

Modifications of Urban Renewal Plan for the Southwest Urban Renewal Area, Project C, approved: Pursuant to Resolution 7-364 the “Urban Renewal Plan for the Southwest Urban Renewal Area, Project C, First Modification Approval Resolution of 1988”, effective November 29, 1988, the Council approved the proposed modifications of the Urban Renewal Plan for the Southwest Urban Renewal Area, Project C, as adopted by the National Capital Planning Commission on November 4, 1987.

Modification of Urban Renewal Plan for Northeast Urban Area, Project No. 1, located in Ward 2, approved: Pursuant to Resolution 8-100, the “Urban Renewal Plan for the Northeast Urban Renewal Area, Project No. 1, First Modification Approval Resolution of 1989”, effective October 10, 1989, the Council approved modifications to the Urban Renewal Plan for the Northeast Urban Renewal Area, Project No. 1, located in Ward 2, as adopted by the National Capital Planning Commission.

Urban Renewal Plan for the Northwest Urban Renewal Area, Project No. 1, First Modification Approval Resolution of 1992: Pursuant to Resolution 9-184, effective February 14, 1992, the Council approved modifications to the Urban Renewal Plan for the Northwest Urban Renewal Area, Project No. 1, located in Ward 2, as adopted by the National Capital Planning Commission.

Urban Renewal Plan for the Northwest Urban Renewal Area, Project No. 1, Second Modification Approval Resolution of 1992: Pursuant

to Resolution 9-321, effective July 24, 1992, the Council approved modifications to the Urban Renewal Plan for the Northwest Urban Renewal Area, Project No. 1, located in Ward 2, as adopted by the National Capital Planning Commission.

Urban Renewal Plan for the 14th Street Urban Renewal Area ("Project Area"), First Modification Approval Resolution of 1993: Pursuant to Resolution 10-209, effective December 17, 1993, the Council approved modifications to the Urban Renewal Plan for the 14th Street Urban Renewal Area, located in Ward 1 as adopted by the National Capital Planning Commission.

Urban Renewal Plan for the Downtown Urban Renewal Area, First Modification Approval Resolution of 1994: Pursuant to Resolution 10-386, effective June 21, 1994, the Council approved modifications to the Urban Renewal Plan for the Downtown Urban Renewal Area, Project No. 1, located in Ward 2, as adopted by the National Capital Planning Commission.

Urban Renewal Plan for the Southwest Urban Renewal Area, Project "C", Second Modification Approval Resolution of 1994: Pursuant to Resolution 10-470, effective December 6, 1994, the Council approved modifications to the Urban Renewal Plan for the Southwest Urban Renewal Area, Project "C", located in Ward 2, as adopted by the National Capital Planning Commission.

Fort Lincoln Urban Renewal Area Revision Approval Resolution of 1994: Pursuant to Resolution 10-471, effective December 6, 1994, the Council approved the National Capital Planning Commission's revision of the Urban Renewal Plan for the Fort Lincoln Urban Renewal Area.

Urban Renewal Plan for the Southwest Urban Renewal Area, Project "C", First Modification Approval Resolution of 1994: Pursuant to Resolution 10-472, effective December 6, 1994, the Council approved modifications to the Urban Renewal Plan for the Southwest Urban Renewal Area, Project "C", located in Ward 2, as adopted by the National Capital Planning Commission. Section 3(c) of Resolution 10-472 was amended by § 60 of D.C. Law 11-110.

Urban Renewal Plan for the Downtown Urban Renewal Area, First Modification Approval Resolution of 1995: Pursuant to Resolution 11-123, effective July 29, 1995, the Council approved modifications to the Urban Renewal Plan for the Downtown Urban Renewal Area, located in Ward 2, as adopted by the National Capital Planning Commission.

Urban Renewal Plan for the Downtown Urban Renewal Area, Second Modification Approval Resolution of 1995: Pursuant to Resolution 11-142, effective October 10, 1995, the Council approved modifications to the Urban Renewal Plan for the Downtown Urban Renewal Area, located in Ward 2, as adopted by the National Capital Planning Commission.

Urban Renewal Plan for the Fourteenth Street Urban Renewal Area Modification Approval Resolution of 1998: Pursuant to Resolution 12-671, effective July 30, 1998, the Council approved the modifications to the Urban Renewal Plan for the Fourteenth Street Urban Renewal Area.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(122) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 6-301.06. Transfer, lease, or sale of real property for public and private uses. [Repealed].

Repealed.

(Aug. 2, 1946, 60 Stat. 795, ch. 736, § 7; June 25, 1948, 62 Stat. 991, ch. 646, § 32(a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; Aug. 28, 1958, 72 Stat. 1103, Pub. L. 85-854, § 1(4-11); July 29, 1970, 84 Stat. 571, Pub. L. 91-358, title I, § 155(c)(19); Oct. 14, 1972, 86 Stat. 812, Pub. L. 92-495, § 3; Aug. 17, 1982, D.C. Law 4-140, § 2(b), 29 DCR 2862; Aug. 1, 1985, D.C. Law 6-15, § 4,

32 DCR 3570; Apr. 3, 2001, D.C. Law 13-226, § 2, 48 DCR 1603; Nov. 13, 2003, D.C. Law 15-39, § 232(e), 50 DCR 5668.)

Prior Codifications. — 1981 Ed., § 5-806. 1973 Ed., § 5-706.

Effect of amendments. — D.C. Law 13-226 added subsecs. (c-2) and (c-3).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Redevelopment Land Agency Disposition Review Temporary Amendment Act of 1999 (D.C. Law 13-44, October 20, 1999, law notification 46 DCR 8864).

For temporary (225 day) amendment of section, see § 2 of Exclusive Right Agreement Time Period Temporary Amendment Act of 2002 (D.C. Law 14-295, April 11, 2003, law notification 50 DCR 5853).

Emergency legislation. — For temporary (90-day) amendment of section, see § 2 of the Redevelopment Land Agency Disposition Review Emergency Amendment Act of 1999 (D.C. Act 13-108, July 9, 1999, 46 DCR 6034).

For temporary (90-day) amendment of section, see § 2 of the Redevelopment Land Agency Disposition Review Emergency Amendment Act of 2000 (D.C. Act 13-431, August 14, 2000, 47 DCR 7462).

For temporary (90 day) amendment of section, see §§ 2 and 6(a) of the Redevelopment Land Agency Disposition Review Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-524, January 11, 2001, 48 DCR 624).

For temporary (90 day) amendment of section, see § 2 of Exclusive Right Agreement Time Period Emergency Amendment Act of 2002 (D.C. Act 14-537, December 2, 2002, 49 DCR 11650).

For temporary (90 day) amendment of section, see § 2 of the Exclusive Right Agreement Time Period Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-23, February 25, 2003, 50 DCR 2139).

For temporary (90 day) repeal of section, see § 232(e) of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) repeal of section, see § 232(e) of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

Legislative history of Law 4-140. — For legislative history of D.C. Law 4-140, see Historical and Statutory Notes following § 6-301.02.

Legislative history of Law 6-15. — Law 6-15, the “Legislative Veto Amendments Act of 1985,” was introduced in Council and assigned Bill No. 6-141, which was referred to the Committee of the Whole. The Bill was adopted on

first and second readings on May 14, 1985, and May 28, 1985, respectively. Signed by the Mayor on June 7, 1985, it was Act. No. 6-30 and transmitted to both Houses of Congress for its review.

Legislative history of Law 13-226. — Law 13-226, the “Redevelopment Land Agency Disposition Review Amendment Act of 2000,” was introduced in Council and assigned Bill No. 13-185, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on July 11, 2000, and November 8, 2000, respectively. Signed by the Mayor on November 29, 2000, it was assigned Act No. 13-498 and transmitted to Both Houses of Congress for its review. D.C. Law 13-226 became effective on April 3, 2001.

Legislative history of Law 15-39. — For Law 15-39, see notes following § 6-301.01.

Resolutions. — Resolution 14-72, the “Request for Proposals for the Redevelopment of Parcel One in the Downtown Urban Renewal Area, Site of the Old Wax Museum, Lot 158 in Square 515 Approval Resolution of 2001,” was approved effective April 3, 2001.

Resolution 14-153, the “Acceptance of the Unsolicited Proposal Submitted by Duron Paint and Wallcovering for the Acquisition and Development of Parcel 11 in the Fourteenth Street Urban Renewal Area Approval Resolution of 2001,” was approved effective July 10, 2001.

Resolutions. — Resolution 14-187, the “Unsolicited Proposal Submitted by DNC Non-federal Programs, Inc. for the Negotiated Disposition and Development of Parcel 69 in the Southwest Urban Renewal Area Emergency Approval Resolution of 2001,” was approved effective July 10, 2001.

Editor’s notes. — Offering document: Pursuant to Resolution 5-765, the “Offering Document to Receive Proposals to Develop Parcels 7, 18, 19, 21, and 22 in the H Street Urban Renewal Area Approval Resolution of 1984,” effective June 26, 1984, the Council approved the issuance of an offering document to develop Parcels 7, 18, 19, 21, and 22 in the H Street Urban Renewal Area.

Pursuant to Resolution 7-308, the “Public Offering Document to Receive Proposals to Develop Parcel 1 in the Downtown Urban Renewal Area Disapproval Resolution of 1988,” effective July 12, 1988, the Council disapproved the issuance of an offering document to develop Parcel 1 in the Downtown Urban Renewal Area.

Review of unsolicited offer to develop parcel in Southwest Urban Renewal Area, Project C: Pursuant to Resolution 5-891, the “Unsolicited

Offer to Develop Parcel 57-2 in the Southwest Urban Renewal Area, Project C Review Resolution of 1984," effective October 23, 1984, the Council reviewed and commented on the unsolicited offer to develop Parcel 57-2 in the Southwest Urban Renewal Area, Project C, pursuant to § 7(e)(2) of the District of Columbia Redevelopment Act of 1945, effective August 17, 1982 (D.C. Law 4-140; D.C. Code, § 6-301.06(c)(2)).

Unsolicited Proposal to Acquire and Develop Parcels 12, 13, 23-A and 34 in the 14th Street Urban Renewal Area Emergency Approval Resolution of 1992: Pursuant to Resolution 9-289, effective July 7, 1992, the Council approved, on an emergency basis, acceptance of an unsolicited proposal to acquire and develop parcels 12, 13, 23-A and 34 in the 14th Street Urban Renewal Area.

Unsolicited Proposal to Lease and Develop Parcel 6, Square 455, in the Downtown Urban Renewal Area Resolution of 1995: Pursuant to Resolution 11-25, effective February 7, 1995, the Council reviewed and provided comments on an Unsolicited Proposal to Lease and Develop Parcel 6, Square 455, in the Downtown Urban Renewal Area.

Unsolicited Proposal Submitted by BUDCO Construction, Inc. for the Negotiated Disposition of Square 5252, Lots 142, 143, 144 and 145 Resolution of 1994: Pursuant to Proposed Resolution 11-19, deemed approved February 24, 1995, Council reviewed and had no comments on an Unsolicited Proposal submitted by BUDCO Construction, Inc. for the negotiated disposition of Square 5252, Lots 142, 143, 144 and 145 which are located between 54th, Blaine and Dix Streets.

Unsolicited Proposal Submitted by the Camp Simms Limited Partnership for the Negotiated Disposition of Camp Simms Resolution of 1994: Pursuant to Proposed Resolution 11-26, deemed approved May 3, 1995, Council reviewed and provided no comment on an Unsolicited Proposal submitted by the Camp Simms Limited Partnership for the negotiated disposition of Camp Simms.

Unsolicited Proposal Submitted by AMB Enterprises, Inc. for the Negotiated Disposition of the former Thompson's Dairy Site: Pursuant to Proposed Resolution 11-27, deemed approved May 3, 1995, Council reviewed and provided no comment on an Unsolicited Proposal submitted by AMB Enterprises, Inc. for the negotiated

disposition of the former Thompson's Dairy site.

Unsolicited Proposal to Acquire 2250 12th Place, N.W., Approval Resolution of 1994: Pursuant to Proposed Resolution 11-39, deemed approved June 24, 1995, Council reviewed and approved a development proposal to acquire and develop 2250 12th Place, N.W.

Unsolicited Proposal Submitted by The Washington Development Group, Inc. for the Negotiated Disposition and Development of Parcel 51-B in the Northwest Number One Urban Renewal Area Resolution of 1995: Pursuant to Proposed Resolution 11-226, deemed approved November 2, 1995, Council reviewed and had no comment on an Unsolicited Proposal submitted by the Washington Development Group, Inc. for the negotiated disposition and development of Parcel 51-B in the Northwest Number One Urban Renewal Area.

Prospectus for Redevelopment Land Agency Parcels 45 and 47A Resolution of 1997: Proposed Resolution 12-0116, the "Prospectus for Redevelopment Land Agency Parcels 45 and 47A Resolution of 1997" was deemed approved, effective Jan. 14, 1997.

Unsolicited Proposals for the Acquisition and Development of Parcel 51 Emergency Approval Resolution of 1998: Pursuant to Resolution 12-618, effective July 7, 1998, the Council expressed its intent to review and provide comments, on an emergency basis, on an unsolicited proposal submitted by 400 Twelfth Street, L.L.C., for the acquisition and development of Parcel 51 (400 12th Street, S.W.).

Unsolicited Proposal Submitted by Challenger Court, Inc., for the Acquisition and Development of the Remainder of Parcel 76 in the Former Southwest "C" Urban Renewal Area Resolution of 1998: Pursuant to Resolution PR 12-1009, deemed approved on November 15, 1998, the Council reviewed and had no comment on the acceptance by the Board of Directors of the District of Columbia Redevelopment Land Agency of the Unsolicited Proposal submitted by Challenger Court, Inc., for the acquisition and development of the remainder of Parcel 76, (G and 9th Streets, S.W.), in the former southwest "C" Urban Renewal Area.

Subsection (c-1) of this section is reserved because the Financial Responsibility and Management Assistance Authority rejected the act that created (c-1).

§ 6-301.07. Housing for displaced families. [Repealed].

Repealed.

(Aug. 2, 1946, 60 Stat. 797, ch. 736, § 8; Nov. 13, 2003, D.C. Law 15-39, § 232(e), 50 DCR 5668.)

§ 6-301.08 HOUSING & BUILDING RESTRICTIONS & REGULATIONS

Prior Codifications. — 1981 Ed., § 5-807. 1973 Ed., § 5-707.

Emergency legislation. — For temporary (90 day) repeal of section, see § 232(e) of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) repeal of section, see § 232(e) of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

Legislative history of Law 15-39. — For Law 15-39, see notes following § 6-301.01.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of

Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 6-301.08. Acquisition of property from prospective lessee or purchaser. [Repealed].

Repealed.

(Aug. 2, 1946, 60 Stat. 797, ch. 736, § 9; Nov. 13, 2003, D.C. Law 15-39, § 232(e), 50 DCR 5668.)

Prior Codifications. — 1981 Ed., § 5-808. 1973 Ed., § 5-708.

Emergency legislation. — For temporary (90 day) repeal of section, see § 232(e) of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) repeal of section, see § 232(e) of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

Legislative history of Law 15-39. — For Law 15-39, see notes following § 6-301.01.

§ 6-301.09. Use-value appraisals. [Repealed].

Repealed.

(Aug. 2, 1946, 60 Stat. 797, ch. 736, § 10; Aug. 28, 1958, 72 Stat. 1103, Pub. L. 85-854, § 1(12); Aug. 17, 1982, D.C. Law 4-140, § 2(c), 29 DCR 2862; Sept. 17, 1982, D.C. Law 4-150, § 402, 29 DCR 3377; Nov. 13, 2003, D.C. Law 15-39, § 232(e), 50 DCR 5668.)

Prior Codifications. — 1981 Ed., § 5-809. 1973 Ed., § 5-709.

Emergency legislation. — For temporary (90 day) repeal of section, see § 232(e) of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) repeal of section, see § 232(e) of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

Legislative history of Law 4-140. — For legislative history of D.C. Law 4-140, see His-

torical and Statutory Notes following § 6-301.02.

Legislative history of Law 4-150. — Law 4-150, the "International Banking Facilities Tax, District of Columbia Redevelopment Act of 1945 Amendment, and Cable Television Communications Act of 1981 Technical Clarification Amendment Act of 1982," was introduced in Council and assigned Bill No. 4-360, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on June 22, 1982 and July 6, 1982, respectively. Signed by the Mayor on July 21, 1982, it was assigned Act No. 4-221 and

transmitted to both Houses of Congress for its review.

Legislative history of Law 15-39. — For Law 15-39, see notes following § 6-301.01.

Editor's notes. — Mayor authorized to issue regulations: Section 401 of D.C. Law 4-150 provided that the Mayor shall issue regulations necessary to carry out the provisions of the act.

§ 6-301.10. Redevelopment companies. [Repealed].

Repealed.

(Aug. 2, 1946, 60 Stat. 798, ch. 736, § 11; Aug. 28, 1958, 72 Stat. 1104, Pub. L. 85-854, § 1(13); Nov. 13, 2003, D.C. Law 15-39, § 232(e), 50 DCR 5668.)

Prior Codifications. — 1981 Ed., § 5-810. 1973 Ed., § 5-710.

Emergency legislation. — For temporary (90 day) repeal of section, see § 232(e) of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) repeal of section, see § 232(e) of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

Legislative history of Law 15-39. — For Law 15-39, see notes following § 6-301.01.

§ 6-301.11. Modification of redevelopment plans. [Repealed].

Repealed.

(Aug. 2, 1946, 60 Stat. 798, ch. 736, § 12; Aug. 28, 1958, 72 Stat. 1104, Pub. L. 85-854, § 1(14); Nov. 13, 2003, D.C. Law 15-39, § 232(e), 50 DCR 5668.)

Prior Codifications. — 1981 Ed., § 5-811. 1973 Ed., § 5-711.

Emergency legislation. — For temporary (90 day) repeal of section, see § 232(e) of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) repeal of section, see § 232(e) of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

Legislative history of Law 15-39. — For Law 15-39, see notes following § 6-301.01.

Resolutions. — Resolution 14-17, the "Urban Renewal Plan for the Downtown Urban Renewal Area Modification Approval Resolution of 2001", was approved effective January 23, 2001.

Resolution 14-155, the "Urban Renewal Plan for the Shaw School Urban Renewal Area Modification Approval Resolution of 2001", was approved effective July 10, 2001.

Editor's notes. — Modifications of Urban Renewal Plan for Shaw School Urban Renewal Area approved: Pursuant to Resolution 5-197, the "Urban Renewal Plan for the Shaw School Urban Renewal Area Modification Approval Resolution of 1983," effective June 7, 1983, the Council approved the proposed modifications of the Shaw Plan as adopted by the National

Capital Planning Commission on August 5, 1982.

Modifications of Urban Renewal Plan for Downtown Urban Renewal Area approved: Pursuant to Resolution 5-255, the "Urban Renewal Plan for the Downtown Urban Renewal Area Modification Approval Resolution of 1983," effective July 5, 1983, the Council approved the proposed modifications of the Urban Renewal Plan as adopted by the National Capital Planning Commission on May 5, 1983.

Modifications of Urban Renewal Plan for 14th Street Urban Renewal Area approved: Pursuant to Resolution 5-256, the "Urban Renewal Plan for the 14th Street Urban Renewal Area Modification Approval Resolution of 1983," effective July 5, 1983, the Council approved the proposed modifications of the Urban Renewal Plan as adopted by the National Capital Planning Commission on July 1, 1981.

Modifications of Urban Renewal Plan for Northeast Urban Renewal Area, Project No. 1 approved: Pursuant to Resolution 5-257, the "Urban Renewal Plan for the Northeast Urban Renewal Area, Project No. 1, Modification Approval Resolution of 1983," effective July 5, 1983, the Council approved the proposed modifications of the Urban Renewal Plan as adopted by the National Capital Planning Commission on May 6, 1982.

Modifications of Urban Renewal Plan for H Street Urban Renewal Area approved: Pursu-

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ant to Resolution 5-570, the "Urban Renewal Plan for the H Street Urban Renewal Area Modification Approval Resolution of 1984," effective February 28, 1984, the Council approved the proposed modifications of the H Street Plan as adopted by the National Capital Planning Commission on August 4, 1983.

Pursuant to Resolution 6-320, the "Urban Renewal Plan for the H Street Urban Renewal Area First Modification Approval Resolution of 1985," effective October 8, 1985, the Council approved the proposed modifications of the Urban Renewal Plan for the H Street Urban Renewal Area as adopted by the National Capital Planning Commission on May 2, 1985.

Modifications to Urban Renewal Plan for Shaw School Urban Renewal Area approved: Pursuant to Resolution 6-327, the "Urban Renewal Plan for the Shaw School Urban Renewal Area First Modification Approval Resolution of 1985," effective October 8, 1985, the Council approved the proposed modifications of the Urban Renewal Plan for the Shaw School Urban Renewal Area as adopted by the National Capital Planning Commission on May 30, 1985.

Modification of Urban Renewal Plan for Fort Lincoln Urban Renewal Area approved: Pursuant to Resolution 6-418, the "Urban Renewal Plan for the Fort Lincoln Urban Renewal Area Second Modification Approval Resolution of 1985," effective November 5, 1985, the Council approved the proposed modifications of the Urban Renewal Plan for the Fort Lincoln Urban Renewal Area, located in Ward 5, as adopted by the National Capital Planning Commission on January 10, 1985.

Modifications of Urban Renewal Plan for Southwest Urban Renewal Area approved: Pursuant to Resolution 6-680, the "Urban Renewal Plan for the Southwest Urban Renewal Area, Project C-1, First Modifications Approval Resolution of 1986," effective May 27, 1986, the Council approved the modifications to the Urban Renewal Plan as adopted by the National Capital Planning Commission on February 6, 1986.

Modifications of Urban Renewal Plan for the Northeast Urban Renewal Area, Project No. 1 approved: Pursuant to Resolution 7-226, the "Urban Renewal Plan for the Northeast Urban Renewal Area, Project No. 1, First Modification Approval Resolution of 1988", effective March 15, 1988, the Council approved the proposed modifications of the Urban Renewal Plan for the Northeast Urban Renewal Area, Project No. 1, as adopted by the National Capital Planning Commission on November 5, 1987.

Modifications of Urban Renewal Plan for the Southwest Urban Renewal Area, Project C, approved: Pursuant to Resolution 7-273 the "Urban Renewal Plan for the Southwest Urban Renewal Area, Project C, First Modification

Approval Resolution of 1988", effective June 14, 1988, the Council approved the proposed modifications of the Urban Renewal Plan for the Southwest Urban Renewal Area, Project C, Ward 2, as adopted by the National Capital Planning Commission on January 7, 1988.

Modifications of Urban Renewal Plan for the Northeast Urban Renewal Area, Project No. 1, approved: Pursuant to Resolution 7-274, the "Urban Renewal Plan for the Northeast Urban Renewal Area, Project No. 1, First Modification Approval Resolution of 1988", effective June 14, 1988, the Council approved the proposed modifications of the Urban Renewal Plan for the Northeast Urban Renewal Area, Project No. 1, as adopted by the National Capital Planning Commission on January 7, 1988.

Modification of Urban Renewal Plan for 14th Street Urban Renewal Area approved: Pursuant to Resolution 7-353, the "Urban Renewal Plan for the 14th Street Urban Renewal Area, First Modification Approval Resolution of 1988", effective November 29, 1988, the Council approved the proposed modifications of the Urban Renewal Plan for the 14th Street Urban Renewal Area, as adopted by the National Capital Planning Commission on April 4, 1985.

Modification of Urban Renewal Plan for Downtown Urban Renewal Area approved: Pursuant to Resolution 7-354, the "Urban Renewal Plan for the Downtown Urban Renewal Area, First Modification Approval Resolution of 1988", effective November 29, 1988, the Council approved the proposed modifications of the Urban Renewal Plan for the Downtown Renewal Area, as adopted by the National Capital Planning Commission on October 1, 1986.

Modifications of Urban Renewal Plan for the Southwest Urban Renewal Area, Project C, approved: Pursuant to Resolution 7-364, the "Urban Renewal Plan for the Southwest Urban Renewal Area, Project C, First Modification Approval Resolution of 1988", effective November 29, 1988, the Council approved the proposed modifications of the Urban Renewal Plan for the southwest Urban Renewal Area, Project C, as adopted by the National Capital Planning Commission on November 4, 1987.

Modification of Urban Renewal Plan for Northeast Urban Area, Project No. 1, located in Ward 2, approved: Pursuant to Resolution 8-100 the "Urban Renewal Plan for the Northeast Urban Renewal Area, Project No. 1, First Modification Approval Resolution of 1989", effective October 10, 1989, the Council approved modifications to the Urban Renewal Plan for the Northeast Urban Renewal Area, Project No. 1, located in Ward 2, as adopted by the National Capital Planning Commission.

Urban Renewal Plan for the Northwest Urban Renewal Area, Project No. 1, First Modification Approval Resolution of 1992: Pursuant to Resolution 9-184, effective February 14,

1992, the Council approved modifications to the Urban Renewal Plan for the Northwest Urban Renewal Area, Project No. 1, located in Ward 2, as adopted by the National Capital Planning Commission.

Renewal Plan for the Northwest Urban Renewal Area, Project No. 1, Second Modification Approval Resolution of 1992: Pursuant to Resolution 9-321, effective July 24, 1992, the Council approved modifications to the Urban Renewal Plan for the Northwest Urban Renewal Area, Project No. 1, located in Ward 2, as adopted by the National Capital Planning Commission.

Urban Renewal Plan for the 14th Street Urban Renewal Area ("Project Area"), First Modification Approval Resolution of 1993: Pursuant to Resolution 10-209, effective December 17, 1993, the Council approved modifications to the Urban Renewal Plan for the 14th Street Urban Renewal Area, located in Ward 1 as adopted by the National Capital Planning Commission.

Urban Renewal Plan for the Downtown Urban Renewal Area, First Modification Approval Resolution of 1994: Pursuant to Resolution 10-386, effective June 21, 1994, the Council approved modifications to the Urban Renewal Plan for the Downtown Urban Renewal Area, Project No. 1, located in Ward 2, as adopted by the National Capital Planning Commission.

Urban Renewal Plan for the Southwest Urban Renewal Area, Project "C", Second Modification Approval Resolution of 1994: Pursuant to Resolution 10-470, effective December 6, 1994, the Council approved modifications to the Urban Renewal Plan for the Southwest Urban Renewal Area, Project "C", located in Ward 2, as adopted by the National Capital Planning Commission.

Urban Renewal Plan for the Southwest Urban Renewal Area, Project "C", First Modification Approval Resolution of 1994: Pursuant to Resolution 10-472, effective December 6, 1994, the Council approved modifications to the Urban Renewal Plan for the Southwest Urban Renewal Area, Project "C", located in Ward 2, as adopted by the National Capital Planning Com-

mission. Section 3(c) of Resolution 10-472 was amended by § 60 of D.C. Law 11-110.

Urban Renewal Plan for the Downtown Urban Renewal Area, First Modification Approval Resolution of 1995: Pursuant to Resolution 11-123, effective July 29, 1995, the Council approved modifications to the Urban Renewal Plan for the Downtown Urban Renewal Area, located in Ward 2, as adopted by the National Capital Planning Commission.

Renewal Plan for the Downtown Urban Renewal Area, Second Modification Approval Resolution of 1995: Pursuant to Resolution 11-142, effective October 10, 1995, the Council approved modifications to the Urban Renewal Plan for the Downtown Urban Renewal Area, located in Ward 2, as adopted by the National Capital Planning Commission.

Renewal Plan for the Fourteenth Street Urban Renewal Area Modification Approval Resolution of 1998: Pursuant to Resolution 12-671, effective July 30, 1998, the Council approved the modifications to the Urban Renewal Plan for the Fourteenth Street Urban Renewal Area.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(122) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 6-301.12. Tax exemption. [Repealed].

Repealed.

(Aug. 2, 1946, 60 Stat. 799, ch. 736, § 13; Mar. 3, 1979, D.C. Law 2-148, § 2, 25 DCR 7001; Nov. 13, 2003, D.C. Law 15-39, § 232(e), 50 DCR 5668.)

Prior Codifications. — 1981 Ed., § 5-812. 1973 Ed., § 5-712.

Emergency legislation. — For temporary (90 day) repeal of section, see § 232(e) of Fiscal Year 2004 Budget Support Emergency Act of

2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) repeal of section, see § 232(e) of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003

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(D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

Legislative history of Law 2-148. — Law 2-148, the “District of Columbia Redevelopment Land Agency Tax Exemption Act of 1978,” was introduced in Council and assigned Bill No. 2-386, which was referred to the Committee on Housing and Urban Development. The Bill

was adopted on first and second readings on November 28, 1978, and December 12, 1978, respectively. Signed by the Mayor on December 29, 1978, it was assigned Act No. 2-327 and transmitted to both Houses of Congress for its review.

Legislative history of Law 15-39. — For Law 15-39, see notes following § 6-301.01.

§ 6-301.13. Employment and expenditures authorized. [Repealed].

Repealed.

(Aug. 2, 1946, 60 Stat. 799, ch. 736, § 14; Aug. 2, 1946, 60 Stat. 809, ch. 744, § 9(b); Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a); Mar. 3, 1979, D.C. Law 2-139, § 3205(yy), 25 DCR 5740; Nov. 13, 2003, D.C. Law 15-39, § 232(e), 50 DCR 5668.)

Prior Codifications. — 1981 Ed., § 5-813. 1973 Ed., § 5-713.

Emergency legislation. — For temporary (90 day) repeal of section, see § 232(e) of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) repeal of section, see § 232(e) of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

Legislative history of Law 2-139. — Law

2-139, the “District of Columbia Government Comprehensive Merit Personnel Act of 1978,” was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978, and October 31, 1978, respectively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

Legislative history of Law 15-39. — For Law 15-39, see notes following § 6-301.01.

§ 6-301.14. Annual report. [Repealed].

Repealed.

(Aug. 2, 1946, 60 Stat. 800, ch. 736, § 15; Aug. 17, 1982, D.C. Law 4-140, § 2(d), 29 DCR 2862; Nov. 13, 2003, D.C. Law 15-39, § 232(e), 50 DCR 5668.)

Prior Codifications. — 1981 Ed., § 5-814. 1973 Ed., § 5-714.

Emergency legislation. — For temporary (90 day) repeal of section, see § 232(e) of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) repeal of section, see § 232(e) of Fiscal Year 2004 Budget Support

Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

Legislative history of Law 4-140. — For legislative history of D.C. Law 4-140, see Historical and Statutory Notes following § 6-301.02.

Legislative history of Law 15-39. — For Law 15-39, see notes following § 6-301.01.

§ 6-301.15. Appropriations authorized. [Repealed].

Repealed.

(Aug. 2, 1946, 60 Stat. 800, ch. 736, § 16; Nov. 13, 2003, D.C. Law 15-39, 232(e), 50 DCR 5668.)

Prior Codifications. — 1981 Ed., § 5-815. 1973 Ed., § 5-715.

Emergency legislation. — For temporary (90 day) repeal of section, see § 232(e) of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) repeal of section, see § 232(e) of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmen-

tal Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 6-301.16. Acquisition under §§ 6-101.01 to 6-102.05. [Repealed].

Repealed.

(Aug. 2, 1946, 60 Stat. 801, ch. 736, § 17; Jan. 2, 1975, 88 Stat. 1963, Pub. L. 93-604, title VI, § 605; Nov. 13, 2003, D.C. Law 15-39, § 232(e), 50 DCR 5668.)

Prior Codifications. — 1981 Ed., § 5-816. 1973 Ed., § 5-716.

Emergency legislation. — For temporary (90 day) repeal of section, see § 232(e) of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) repeal of section, see § 232(e) of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

Legislative history of Law 15-39. — For Law 15-39, see notes following § 6-301.01.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts

Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 6-301.17. Private lending institutions. [Repealed].

Repealed.

(Aug. 2, 1946, 60 Stat. 801, ch. 736, § 19; Aug. 2, 1954, 68 Stat. 630, ch. 649, title III, § 315; Nov. 13, 2003, D.C. Law 15-39, § 232(e), 50 DCR 5668.)

Prior Codifications. — 1981 Ed., § 5-817. 1973 Ed., § 5-717.

Emergency legislation. — For temporary (90 day) repeal of section, see § 232(e) of Fiscal Year 2004 Budget Support Emergency Act of

2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) repeal of section, see § 232(e) of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003

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(D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

Legislative history of Law 15-39. — For Law 15-39, see notes following § 6-301.01.

§ 6-301.18. Acceptance of financial assistance authorized; urban renewal projects. [Repealed].

Repealed.

(Aug. 2, 1946, ch. 736, § 20; July 15, 1949, 63 Stat. 441, ch. 338, title VI, § 609; Aug. 2, 1954, 68 Stat. 630, ch. 649, title III, § 316; Aug. 10, 1965, 79 Stat. 484, Pub. L. 89-117, title III, § 317; May 25, 1967, 81 Stat. 20, Pub. L. 90-19, § 3; Aug. 17, 1982, D.C. Law 4-140, § 2(e), 29 DCR 2862; Nov. 13, 2003, D.C. Law 15-39, § 232(e), 50 DCR 5668.)

Prior Codifications. — 1981 Ed., § 5-818. 1973 Ed., § 5-717a.

Emergency legislation. — For temporary (90 day) repeal of section, see § 232(e) of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) repeal of section, see § 232(e) of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

Legislative history of Law 4-140. — For legislative history of D.C. Law 4-140, see Historical and Statutory Notes following § 6-301.02.

Legislative history of Law 15-39. — For Law 15-39, see notes following § 6-301.01.

Delegation of Authority. — Delegation of authority under Law 4-140, see Mayor's Order 83-127, May 10, 1983.

Change in Government. — This section originated at a time when local government

powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402 (123), (124), and (125) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 6-301.19. Streets and highways; release, modification, or departure from approved redevelopment plan. [Repealed].

Repealed.

(Aug. 2, 1946, 60 Stat. 802, ch. 736, § 21; July 15, 1949, 63 Stat. 441, ch. 338, title VI, § 609; Nov. 13, 2003, D.C. Law 15-39, § 232(e), 50 DCR 5668.)

Prior Codifications. — 1981 Ed., § 5-819. 1973 Ed., § 5-718.

Emergency legislation. — For temporary (90 day) repeal of section, see § 232(e) of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) repeal of section, see § 232(e) of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003

(D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

Legislative history of Law 15-39. — For Law 15-39, see notes following § 6-301.01.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmen-

tal Organization in Volume 1). Section 402 (126) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the

District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 6-301.20. Severability. [Repealed].

Repealed.

(Aug. 2, 1946, 60 Stat. 802, ch. 736, § 22; July 15, 1949, 63 Stat. 441, ch. 338, title VI, § 609; Mar. 25, 2009, D.C. Law 17-353, § 303(c), 56 DCR 1117.)

Prior Codifications. — 1981 Ed., § 5-820.

1973 Ed., § 5-719.

Subchapter II. Neighborhood Development.

§ 6-311.01. Neighborhood development programs.

Notwithstanding any requirement or condition to the contrary in § 6-301.05 [repealed] or 6-301.18(i) [repealed] or in any other provision of law, the District of Columbia Redevelopment Land Agency may plan and undertake neighborhood development programs under part B of title I of the Housing Act of 1949 (as added by this section), subject to all of the provisions of subchapter I of this chapter to the extent not inconsistent with such part B, and any such program shall be regarded as complying with the requirements of such §§ 6-301.05 [repealed] and 6-301.18(i) [repealed] and of such other provision of law if it meets the applicable requirements established under such part B.

(Aug. 1, 1968, 82 Stat. 520, Pub. L. 90-448, title V, § 501(c).)

Section references. — This section is referred to in § 6-321.01.

Prior Codifications. — 1981 Ed., § 5-821.
1973 Ed., § 5-719a.

References in text. — Part B of title I of the

Housing Act of 1949, referred to in this section, is the Act of July 15, 1949, 63 Stat. 413, ch. 338.

The parenthetical phrase “as added by this section” has reference to § 501(b) of the Act of August 1, 1968, 82 Stat. 520, Pub. L. 90-448.

Subchapter III. Transfer to Agency of Certain Property near Maine Avenue.

§ 6-321.01. Authorized.

Subject to the provisions of §§ 6-301.20, 6-311.01, and this subchapter, the Council of the District of Columbia is authorized on behalf of the United States to transfer by one or more quitclaim deeds to the District of Columbia Redevelopment Land Agency established by § 6-301.03 [repealed], all right, title, and interest of the United States in and to part or all of certain property in the said District, as follows: The property located within the bounds of the

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site the legal description of which is the Southwest Waterfront Project Site (dated October 8, 2009) under Exhibit A of the document titled “Intent to Clarify the Legal Description in Furtherance of Land Disposition Agreement”, as filed with the Recorder of Deeds on October 27, 2009 as Instrument Number 0000016776.

(Sept. 8, 1960, 74 Stat. 871, Pub. L. 86-736, § 1; July 9, 2012, 126 Stat. 990, Pub. L. 112-143, § 1(a), (b).)

Section references. — This section is referred to in §§ 6-321.02 to 6-321.06.

Prior Codifications. — 1981 Ed., § 5-822. 1973 Ed., § 5-720.

Effect of amendments. — Pub. L. 112-143 rewrote the section, which had read as follows: “Subject to the provisions of §§ 6-301.20, 6-311.01, and this subchapter, the Council of the District of Columbia is authorized on behalf of the United States to transfer to the District of Columbia Redevelopment Land Agency established by § 6-301.03, all right, title, and interest of the United States in and to part or all of certain property in the said District, as follows: The area bounded by the east line of 14th Street Southwest, the existing southerly (or westerly) building line of Maine Avenue Southwest, the northerly line of Fort Lesley J. McNair at P Street Southwest, and the bulkhead line established pursuant to the Rivers and Harbors Act of 1899 (30 Stat. 1151), as amended, together with any land area extending channelward from said bulkhead line.”

Editor’s notes. — Section 3 of D.C. Law Pub. L. 112-143 provided:

“SEC. 3. MAINE LOBSTERMAN MEMORIAL

“(a) IN GENERAL. — Except as provided in subsection (b), nothing in this Act or any amendment made by this Act authorizes the removal, destruction, or obstruction of the Maine Lobsterman Memorial which is located near Maine Avenue in the District of Columbia as of the date of enactment of this Act.

“(b) MOVEMENT OF MEMORIAL. — The Maine Lobsterman Memorial referred to in subsection (a) may be moved from its location as of the date of the enactment of this Act to another location on the Southwest waterfront near Maine Avenue in the District of Columbia if at that location there would be a clear, unimpeded pedestrian pathway and line of sight from the Memorial to the water.”

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402 (127) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 6-321.02. Determination of necessity.

The Council of the District of Columbia shall, prior to transferring to the Agency right, title, and interest in and to any of the said property described in § 6-321.01, determine whether such property is necessary to the redevelopment of the southwest section of the District of Columbia in accordance with a master plan approved by it, and, if it so finds, it shall, acting on behalf of the United States, transfer and donate to the Agency all right, title, and interest of the United States in and to so much of said property as it determines is necessary to carry out such master plan.

(Sept. 8, 1960, 74 Stat. 871, Pub. L. 86-736, § 2; July 9, 2012, 126 Stat. 990, Pub. L. 112-143, § 1(c).)

Section references. — This section is referred to in §§ 6-321.01 and 6-321.04 to 6-321.08.

Prior Codifications. — 1981 Ed., § 5-823. 1973 Ed., § 5-721.

Effect of amendments. — Pub. L. 122-143 substituted “a master plan” for “an urban renewal plan”; and substituted “such master plan” for “such urban renewal plan”.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402 (128) of Reorganization Plan No. 3 of 1967 (see

Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 6-321.03. Transfer of jurisdiction to Agency.

The Council of the District of Columbia shall, at the time of transferring to the Agency right, title, and interest in and to any of the property described in § 6-321.01, also transfer to the Agency the Mayor’s jurisdiction as provided by § 10-501.01 over so much of the said property as may be so transferred.

(Sept. 8, 1960, 74 Stat. 871, Pub. L. 86-736, § 3; July 9, 2012, 126 Stat. 990, Pub. L. 112-143, § 1(e)(2).)

Section references. — This section is referred to in § 6-321.05.

Prior Codifications. — 1981 Ed., § 5-824. 1973 Ed., § 5-722.

Effect of amendments. — Pub. L. 112-143 substituted “The” for “Subject to the provisions of § 6-321.05, the”.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402 (129) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred

all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 6-321.04. Lease of property by Agency; other transfers limited; priority of owner of displaced business concern.

The Agency is hereby authorized, in accordance with the District of Columbia Redevelopment Act of 1945 and § 6-321.01, to lease or sell to a redevelopment company or other lessee or purchaser such real property as may be transferred to the Agency under the authority of this subchapter.

(Sept. 8, 1960, 74 Stat. 871, Pub. L. 86-736, § 4; Dec. 6, 1967, 81 Stat. 542, Pub. L. 90-176, § 1; July 9, 2012, 126 Stat. 990, Pub. L. 112-143, § 1(d).)

§ 6-321.05 HOUSING & BUILDING RESTRICTIONS & REGULATIONS

Section references. — This section is referred to in § 6-321.05.

Prior Codifications. — 1981 Ed., § 5-825.

1973 Ed., § 5-723.

Effect of amendments. — Pub. L. 112-145 rewrote the section.

CASE NOTES

ANALYSIS

Actions and proceedings generally.

Injunctions.

Lease offers to displaced business concerns.

Actions and proceedings generally.

No presumption of expertise, either in interpreting or applying statute relating to notification by District of Columbia Redevelopment Land Agency to displaced businesses as to availability of other real property for leasing to owners, could appropriately be given Development Land Agency where Congress itself had responded to Agency's past interpretation and administration of the legislation with severe censure. Act Sept. 8, 1960, § 4, 74 Stat. 871. *Cy Ellis Raw Bar v. District of Columbia Redevelopment Land Agency*, 433 F.2d 543, 1970 U.S. App. LEXIS 7561 (C.A.D.C. 1970).

Alleged failure of District of Columbia Redevelopment Land Agency to make a specific lease offer to owner of restaurant displaced by urban renewal program involved the violation of a statute that was subject to judicial review and correction, and did not present matters committed to unreviewable agency discretion. Act Sept. 8, 1960, § 4, 74 Stat. 871. *Cy Ellis Raw Bar v. District of Columbia Redevelopment Land Agency*, 433 F.2d 543, 1970 U.S. App. LEXIS 7561 (C.A.D.C. 1970).

Injunctions.

Alleged failure of District of Columbia Redevelopment Land Agency to make specific lease offer to owner of restaurant displaced by urban renewal program presented owner with the kind of irreparable injury that would warrant a permanent injunction if she was correct as to the merits. Act Sept. 8, 1960, § 4, 74 Stat. 871. *Cy Ellis Raw Bar v. District of Columbia Redevelopment Land Agency*, 433 F.2d 543, 1970 U.S. App. LEXIS 7561 (C.A.D.C. 1970).

Failure of restaurant owner, whose business was displaced by urban renewal program, to demonstrate an ability to carry out plan of District of Columbia Redevelopment Land

Agency did not require a holding that owner should be denied preliminary injunctive relief where owner was on notice that, in any event, the Agency would wrongfully refuse to make a specific lease offer to her, and where owner's letter of protest, which came within statutorily prescribed 180-day period, adequately served to put Agency on notice that its procedure was being questioned. Act Sept. 8, 1960, § 4, 74 Stat. 871. *Cy Ellis Raw Bar v. District of Columbia Redevelopment Land Agency*, 433 F.2d 543, 1970 U.S. App. LEXIS 7561 (C.A.D.C. 1970).

Lease offers to displaced business concerns.

Congress intended that lease offers to displaced business concerns, arising out of urban renewal program, should be made by District of Columbia Redevelopment Land Agency, and when failure to make such offer was noted on timely objection by a displaced person the Agency's omission of such an offer must be held invalid. Act Sept. 8, 1960, § 4, 74 Stat. 871. *Cy Ellis Raw Bar v. District of Columbia Redevelopment Land Agency*, 433 F.2d 543, 1970 U.S. App. LEXIS 7561 (C.A.D.C. 1970).

District of Columbia Redevelopment Land Agency, involved in dispute with restaurant owner over alleged failure of Agency to tender a lease offer, could not successfully contend that offer submitted by owner pursuant to an effort of a District Judge to reach a compromise settlement had already been given the application of standards generally followed by the Agency, where such contention was not only unsound legally but represented a continuation in court of the kind of hostile and obstructive attitude of such Agency that had been condemned by a congressional committee and had impelled conclusion of Court of Appeals that the Agency had been frustrating rather than effectuating the legislative mandate. Act Sept. 8, 1960, § 4, 74 Stat. 871. *Cy Ellis Raw Bar v. District of Columbia Redevelopment Land Agency*, 433 F.2d 543, 1970 U.S. App. LEXIS 7561 (C.A.D.C. 1970).

§ 6-321.05. Reversion provisions. [Repealed].

Repealed.

(Sept. 8, 1960, 74 Stat. 872, Pub. L. 86-736, § 5; May 25, 1967, 81 Stat. 25, Pub. L. 90-19, § 17; July 9, 2012, 126 Stat. 990, Pub. L. 112-143, § 1(e)(1).)

Prior Codifications. — 1981 Ed., § 5-826. 1973 Ed., § 5-724.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the

right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 6-321.06. Council not required to transfer property needed for municipal purposes.

Nothing contained in this subchapter shall be construed as requiring the said Council of the District of Columbia to transfer the right, title, and interest in and to so much of the property described in § 6-321.01 as the Council may determine, in its discretion, is required for municipal purposes or is to continue to be owned by the United States under the jurisdiction of the Mayor, for the benefit of the District of Columbia.

(Sept. 8, 1960, 74 Stat. 872, Pub. L. 86-736, § 6.)

Prior Codifications. — 1981 Ed., § 5-827. 1973 Ed., § 5-725.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the

right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 6-321.07. Not considered a local grant-in-aid.

No transfer or donation of any interest in real property under the authority of this subchapter shall constitute a local grant-in-aid in connection with any urban renewal project being undertaken with federal assistance under title I of the Housing Act of 1949, as amended.

(Sept. 8, 1960, 74 Stat. 872, Pub. L. 86-736, § 7.)

Section references. — This section is referred to in §§ 6-321.01, 6-321.04, 6-321.05, 6-321.06 and 6-321.08.

Prior Codifications. — 1981 Ed., § 5-828. 1973 Ed., § 5-726.

References in text. — Title I of the Housing Act of 1949, as amended, referred to in this section, is the Act of July 15, 1949, 63 Stat. 413, ch. 338.

§ 6-321.08. Definitions.

As used in this subchapter, any reference to the “Agency” shall be deemed to be a reference to the District of Columbia as the successor in interest to the Agency.

(Sept. 8, 1960, 74 Stat. 872, Pub. L. 86-736, § 8; July 9, 2012, 126 Stat. 990, Pub. L. 112-143, § 1(f).)

Prior Codifications. — 1981 Ed., § 5-829. 1973 Ed., § 5-727.

Effect of amendments. — Pub. L. 112-143 rewrote the section, which had read as follows: “As used in this subchapter, the terms ‘Agency,’

‘lessee,’ ‘real property,’ ‘redevelopment,’ and ‘redevelopment company’ shall have the respective meanings provided for such terms by § 6-301.02.”

Subchapter IV. Relocation Services.

PART A.

GENERAL.

§ 6-331.01. Relocation services for displaced persons and concerns; preference in vacancies in government housing; housing surveys.

The Mayor of the District of Columbia is hereby authorized to provide such relocation services as he shall determine to be reasonable and necessary to individuals, families, business concerns, and nonprofit organizations which may be or have been displaced from real property by actions of the United States or of the government of the District of Columbia, except the District of Columbia Redevelopment Land Agency, such actions to include, but not be limited to, acquisition of property for public works projects, condemnation of unsafe and insanitary buildings, and enforcement of the laws and regulations relating to housing. The Mayor shall provide that such individuals and families so displaced shall be given the same preference with respect to vacancies occurring in housing owned or operated within the District of Columbia by federal or District of Columbia governmental agencies as is provided in § 6-301.07(b) [repealed]. The Mayor is authorized to make housing surveys in order to carry out this subchapter.

(Oct. 6, 1964, 78 Stat. 1004, Pub. L. 88-629, § 1.)

Section references. — This section is referred to in §§ 6-331.03 and 42-3171.04.

Prior Codifications. — 1981 Ed., § 5-830. 1973 Ed., § 5-728.

Delegation of Authority. — Delegation of Authority to the Director of the Office of Property Management to Provide Relocation Assistance to Persons and Businesses Displaced by the District of Columbia’s Acquisition of Real

Property through Condemnation by Eminent Domain or Threat Thereof, see Mayor’s Order 2004-196, December 2, 2004 (51 DCR 11376).

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmen-

tal Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office

of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 6-331.02. Determination of availability of housing for displaced persons.

Prior to the acquisition of real property for any public works project of the government of the District of Columbia, the Mayor shall make the same determinations with respect to the availability of housing for displaced individuals and families as is required by § 6-301.07(a) [repealed].

(Oct. 6, 1964, 78 Stat. 1004, Pub. L. 88-629, § 3.)

Section references. — This section is referred to in §§ 6-331.01 and 6-331.04.

Prior Codifications. — 1981 Ed., § 5-831. 1973 Ed., § 5-730.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 6-331.03. District of Columbia Relocation Assistance Office.

There is hereby established within the District of Columbia Redevelopment Land Agency an office to be known as the District of Columbia Relocation Assistance Office (hereinafter referred to as the "Office"). The Office shall provide the relocation services authorized by § 6-331.01, administer the payments authorized by former § 5-729 [Code, 1973 Ed.] and provide the relocation assistance which the District of Columbia Redevelopment Land Agency is authorized to provide by §§ 6-301.01 to 6-301.20 [repealed] and any other act.

(Oct. 6, 1964, 78 Stat. 1004, Pub. L. 88-629, § 4.)

Prior Codifications. — 1981 Ed., § 5-832. 1973 Ed., § 5-731.

References in text. — "Former § 5-729",

referred to in the second sentence, is § 5-729, D.C. Code, 1973 Ed.

§ 6-331.04. Regulations to carry out part.

The Council of the District of Columbia is hereby authorized to make regulations to carry out the purposes of this part.

(Oct. 6, 1964, 78 Stat. 1004, Pub. L. 88-629, § 5.)

Prior Codifications. — 1981 Ed., § 5-833. 1973 Ed., § 5-732.

New implementing regulations. — New implementing regulations: Pursuant to this section, the "Relocation Regulation Payment Increase Amendment Act of 1978" (D.C. Law 2-122, Oct. 13, 1978, 25 DCR 1547) was enacted.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(131) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

PART B.

PERSONS DISPLACED BY DISTRICT PROGRAMS, WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY, OR CONDOMINIUM CONVERSION.

§ 6-333.01. Relocation payments and assistance for persons displaced by District programs or by Washington Metropolitan Area Transit Authority; relocation services for persons displaced by condominium or cooperative conversion, or by rehabilitation, demolition, or discontinuance from housing use.

(a) Whenever real property is acquired by the government of the District of Columbia or the Washington Metropolitan Area Transit Authority for a program or project which is not subject to §§ 210 and 211 of this title, and such acquisition will result in the displacement of any person on or after January 2, 1971, the Mayor of the District of Columbia or the Washington Metropolitan Area Transit Authority, as the case may be, shall make all relocation payments and provide all assistance required of a federal agency by this act. Whenever real property is acquired for such a program or project on or after January 2, 1971, such Mayor or Authority, as the case may be, shall make all payments and meet all requirements prescribed for a federal agency by title III of this act.

(b)(1) If a housing accommodation within the geographic boundaries of the District of Columbia is converted into a condominium or cooperative, substan-

tially rehabilitated or demolished, or discontinued from housing use, the Mayor shall provide relocation services in the manner required by subsection (a) of this section to low-income tenants who move from the accommodation. Services include, at a minimum, ascertaining the relocation needs for each household, providing current information on the availability of comparable housing of suitable size, supplying information concerning federal and District housing programs, and providing counseling to displaced persons in order to minimize hardships in adjusting to relocation.

(2) For purposes of this section, the term:

(A) "Comparable housing" means rental or homeownership units with equivalent benefits and services included in the monthly payments.

(B) "Suitable size" means for a 1-person family, an efficiency unit; for a 2-person family, a 1-bedroom unit; for a family of 3 or 4 persons, a 2-bedroom unit; for a family of 5 or 6 persons, a 3-bedroom unit; and for a family of 7 or more persons, a 4-bedroom unit. In addition, the meaning of the term "suitable size" is increased as necessary to allow children and unmarried adults of the opposite sex to have separate sleeping rooms. In determining the meaning of the term "suitable size," 1 person living in a 1-bedroom unit is eligible for relocation in a 1-bedroom comparable unit.

(Jan. 2, 1971, 84 Stat. 1899, Pub. L. 91-646, title II, § 209; Sept. 28, 1979, D.C. Law 3-19, § 12, 26 DCR 361; Sept. 10, 1980, D.C. Law 3-86, §§ 211, 303(b), 27 DCR 2975.)

Cross references. — Highways, public utility relocation expenses, see §§ 9-107.02 and 9-401.03.

Mayor to provide relocation assistance, see § 42-3403.03.

Prior Codifications. — 1981 Ed., § 5-834. 1973 Ed., § 5-732a.

Legislative history of Law 3-19. — Law 3-19, the "Cooperative Regulation Act of 1979," was introduced in Council and assigned Bill No. 3-10, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on May 22, 1979, and June 5, 1979, respectively. Signed by the Mayor on July 12, 1979, it was assigned Act No. 3-63 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-86. — Law 3-86, the "Rental Housing Conversion and Sale Act of 1980," was introduced in Council and assigned Bill No. 3-222, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on June 3, 1980, and June 17, 1980, respectively. Signed by the Mayor on June 27, 1980, it was assigned Act No. 3-204 and transmitted to both Houses of Congress for its review.

References in text. — The words "§§ 210 and 211 of this title" and "title III of this act,"

referred to in the first and second sentences, respectively, of subsection (a) of this section, refer to §§ 210 and 211 of title II, and title III, respectively, of the Act of January 2, 1971, 84 Stat. 1894, Pub. L. 91-646.

Delegation of Authority. — Delegation of Authority to the Deputy Mayor for Planning and Economic Development and the Director of the Office of Property Management to Provide Relocation Assistance to Persons and Businesses Displaced by the District of Columbia's Acquisition of Real Property through Condemnation by Eminent Domain or Threat Thereof, see Mayor's Order 2007-230, October 15, 2007 (55 DCR 165).

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 6-333.02. Relocation advisory services for persons displaced by condominium conversion, or by rehabilitation, demolition, or discontinuance from housing use of building.

Whenever a building in the District of Columbia is converted from rental to condominium units, or is substantially rehabilitated or demolished, or is discontinued from housing use, the Relocation Assistance Office shall provide relocation advisory services for tenants who move from the converted, substantially rehabilitated, demolished, or discontinued building. This includes: ascertaining the relocation needs for each household; providing current information on the availability of equivalent substitute housing; supplying information concerning federal and District housing programs; and providing other advisory services to displaced persons in order to minimize hardships in adjusting to relocation.

(Mar. 29, 1977, D.C. Law 1-89, title V, § 516, 23 DCR 9532b; Mar. 16, 1978, D.C. Law 2-54, § 804, 24 DCR 5334; Oct. 13, 1978, D.C. Law 2-121, § 2, 25 DCR 1542.)

Prior Codifications. — 1981 Ed., § 5-835. 1973 Ed., § 5-732b.

Legislative history of Law 1-89. — Law 1-89, the “Condominium Act of 1976,” was introduced in Council and assigned Bill No. 1-179, which was referred to the Committee on Housing and Urban Development. The Bill was adopted on first and second readings on June 29, 1976 and June 20, 1976, respectively. Signed by the Mayor on August 6, 1976, it was assigned Act No. 1-151 and transmitted to both Houses of Congress for its review.

Legislative history of Law 2-54. — Law 2-54, the “Rental Housing Act of 1977,” was introduced in Council and assigned Bill No. 2-152, which was referred to the Committee of the Whole. The Bill was adopted on first and

second readings on November 15, 1977, and November 29, 1977, respectively. There being no action by the Mayor, it was assigned Act No. 2-118 and transmitted to both Houses of Congress for its review.

Legislative history of Law 2-121. — Law 2-121, the “Housing Discontinuance Regulation Act of 1978,” was introduced in Council and assigned Bill No. 2-333, which was referred to the Committee on Housing and Urban Development. The Bill was adopted on first, amended first, and second readings on June 13, 1978, June 27, 1978, and July 11, 1978, respectively. Signed by the Mayor on August 2, 1978, it was assigned Act No. 2-251 and transmitted to both Houses of Congress for its review.

Subchapter V. Properties near Maryland Avenue and Virginia Avenue.

§ 6-341.01. Transfer to Agency authorized.

In accordance with the provisions of this subchapter, the Mayor of the District of Columbia, consistent with the Council of the District of Columbia’s approval of the urban renewal plan requiring such action, is authorized and directed on behalf of the United States of America to transfer to the Agency all right, title, and interest of the United States in and to the following real properties in the District of Columbia:

(1) Part of Maryland Avenue Southwest, of Thirteen-and-a-Half Street Southwest, and of 13th Street Southwest, described as follows: beginning for the same at the intersection of the northerly line of Maryland Avenue

Southwest, with the east line of Fourteenth Street Southwest, and running thence along the said northerly line of Maryland Avenue in a northeasterly direction 256.25 feet to the west line of Thirteen-and-a-Half Street Southwest; thence along the said line of Thirteen-and-a-Half Street due north 251.67 feet to the south line of D Street Southwest; thence due east 70.0 feet to the east line of Thirteen-and-a-Half Street; thence along the said east line of Thirteen-and-a-Half Street due south 226.50 feet to the northerly line of Maryland Avenue; thence along the said line of Maryland Avenue in a northeasterly direction 256.50 feet to the west line of Thirteenth Street Southwest; thence along the said west line of Thirteenth Street due north 140.92 feet to the south line of D Street; thence due east 110.0 feet to the east line of Thirteenth Street Southwest; thence along the said line of Thirteenth Street due south 101.67 feet to the northerly line of Maryland Avenue; thence along the northerly line of Maryland Avenue in a northeasterly direction 255.85 feet; thence leaving the said line of Maryland Avenue and running along the arc of a circle, the radius of which is 811.27 feet, a central angle of 1 degree 40 minutes 55 seconds, deflecting to the left an arc distance of 23.82 feet; thence south 70 degrees 00 minutes 00 seconds west 592.28 feet; thence south 64 degrees 54 minutes 00 seconds west 146.81 feet; thence along the arc of a circle, the radius of which is 60.0 feet, a central angle of 60 degrees 36 minutes 40 seconds, deflecting to the right an arc distance of 63.47 feet to a point of tangent; thence south 60 degrees 36 minutes 40 seconds west 184.47 feet; thence north 51 degrees 37 minutes 00 seconds west 38.0 feet to a point of curve; thence along the arc of a circle, the radius of which is 47.0 feet, a central angle of 51 degrees 37 minutes, deflecting to the right an arc distance of 42.34 feet to a point of tangent; thence due north 30.06 feet to the point of beginning, containing 61,786.20 square feet; all as shown on plat of survey recorded in the Office of the Surveyor of the District of Columbia in Survey Book 173, page 458.

(2) Part of 13th Street Southwest, closed, part of Thirteen-and-a-Half Street Southwest, closed, and part of E Street Southwest, closed, as per plat recorded in the Office of the Surveyor of the District of Columbia in Book 140, page 73, described in 1 piece, as follows: beginning for the same at a point in the southerly line of Maryland Avenue Southwest, said point being south 70 degrees 28 minutes 40 seconds west 361.01 feet from the intersection of the west line of Twelfth Street Southwest, with the said southerly line of Maryland Avenue, said point being also the northwesterly corner of original square 299; and running thence along the east line of Thirteenth Street Southwest, closed, due south 409.71 feet; thence due west 95.59 feet; thence north 71 degrees 17 minutes 15 seconds west 15.21 feet to the west line of said Thirteenth Street closed; thence along said line due north 79.47 feet to the south line of E Street Southwest, closed, said point being also the northeast corner of original square 270; thence along the south line of said E Street closed due west 234.62 feet; thence north 71 degrees 17 minutes 15 seconds west 106.13 feet; thence north 51 degrees 37 minutes 00 seconds west 90.15 feet to the north line of said E Street closed; thence along said line due east 94.12 feet to the west line of Thirteen-and-a-Half Street Southwest, closed, said point being also the southeast corner of original square east-of-267; thence along the west line of said

Thirteen-and-a-Half Street closed due north 85.83 feet to the said southerly line of Maryland Avenue; thence along said line north 70 degrees 28 minutes 40 seconds east 74.27 feet to the east line of said Thirteen-and-a-Half Street closed, said point being also the northwesterly corner of original square 269; thence along the east line of Thirteen-and-a-Half Street closed due south 110.65 feet to the north line of said E Street closed; thence along said line due east 241.66 feet to the west line of Thirteenth Street closed; thence along said line due north 196.33 feet to the southerly line of said Maryland Avenue; thence along said line north 70 degrees 28 minutes 40 seconds east 116.71 feet to the point of beginning, containing 80,206.53 square feet; all as shown on plat of computation recorded in the Office of the Surveyor of the District of Columbia in Survey Book 183, page 81.

(3) Part of Maryland Avenue Southwest, described as follows: beginning for the same at the intersection of the west line of Twelfth Street Southwest, with the southerly line of Maryland Avenue Southwest, said point being also the northeasterly corner of original square 299; and running thence along the said southerly line of Maryland Avenue south 70 degrees 28 minutes 40 seconds west 889.79 feet; thence north 53 degrees 21 minutes 10 seconds east 104.83 feet; thence north 72 degrees 43 minutes 00 seconds east 790.21 feet to the point of beginning, containing 13,733.95 square feet; all as shown on plat of computation recorded in the Office of the Surveyor of the District of Columbia in Survey Book 183, page 81.

(4) Parts of 3rd Street Southwest, 4th Street Southwest, and Virginia Avenue Southwest, abutting square 537, described in 1 piece as follows: beginning for the same at the intersection of the north line of E Street Southwest, with the west line of Third Street Southwest, said point also being the southeast corner of said square 537, and running thence along the said line of Third Street, due north 122.08 feet to the southerly line of Virginia Avenue Southwest; thence along said line of Virginia Avenue in a northwesterly direction 598.0 feet to the east line of Fourth Street Southwest; thence along said line of Fourth Street due south 323.33 feet to the southwest corner of said square 537; thence due west 13.0 feet; thence due north 373.68 feet; thence in a southeasterly direction, parallel with and 16.0 feet southwestwardly at right angles from the centerline of track numbered 1 of railroad of the Philadelphia, Baltimore, and Washington Railroad Company, 633.12 feet; thence due south 160.60 feet; thence due west 19.36 feet to the point of beginning, containing 33,698.44 square feet; all as shown on plat of survey recorded in the Office of the Surveyor of the District of Columbia in Survey Book 174, page 413.

(5) Parts of 3rd Street Southwest, Virginia Avenue Southwest, and public space abutting square N-583, described in 1 piece, as follows: beginning for the same at the intersection of the north line of E Street Southwest, with the east line of Third Street Southwest, said point also being the southwest corner of square N-583, and running thence due west 20.42 feet; thence due north 135.50 feet; thence in a southeasterly direction, parallel with and 16.0 feet southwestwardly at right angles from the centerline of track numbered 1 of railroad of the Philadelphia, Baltimore, and Washington Railroad Company, 390.04 feet; thence due south 4.23 feet; thence due west 225.71 feet to the

southeast corner of said square N-583; thence along said square due north 40.0 feet to the southwesterly line of Virginia Avenue Southwest; thence along said line in a northwesterly direction 128.33 feet to the said east line of Third Street; thence along said line due south 82.67 feet to the point of beginning, containing 18,229.36 square feet; all as shown on plat of survey recorded in the Office of the Surveyor of the District of Columbia in Survey Book 174, page 413.

(6) Part of Virginia Avenue, 6th Street, and public space abutting square S-463, described as follows: beginning for the same at the intersection of the west line of Sixth Street, southwest, with the northerly line of Virginia Avenue, said point of beginning being also the most southerly corner of square S-463; and running thence along the said west line of Sixth Street due north 75.33 feet; thence due east 9.25 feet; thence due south 106.15 feet; thence in a northwesterly direction along the line 25.90 feet from and parallel to the said northerly line of Virginia Avenue north 70 degrees 17 minutes 40 seconds west 522.42 feet; thence due north 20.0 feet; thence due east 134.24 feet to the northwest corner of said square S-463; thence along the west line of said square due south 40.58 feet to the said northerly line of Virginia Avenue; thence in a southeasterly direction along the said northerly line of Virginia Avenue south 70 degrees 17 minutes 40 seconds east 370.0 feet to the point of beginning, containing 16,461.50 square feet; all as shown on plat of survey recorded in the Office of the Surveyor of the District of Columbia in Survey Book 176, page 372.

(7) Part of D Street and Maryland Avenue, Southwest, described as follows: beginning for the same at the southeast corner of square 386, and running thence due south 14.26 feet; thence due west 605.71 feet to a point of curve; thence along the arc of a circle, the radius of which is 600.0 feet, deflecting to the left an arc distance of 125.58 feet; thence north 70 degrees 28 minutes 00 seconds east 774.97 feet; thence due south 47.51 feet to the northeast corner of said square 386; thence along the northwesterly boundary of said square in a southwesterly direction 432.25 feet to the northwest corner of said square; thence due south 40.0 feet to the southwest corner of said square; thence along the southerly boundary of said square due east 407.42 feet to the point of beginning, containing 39,922.0 square feet; all as shown on plat of survey recorded in the Office of the Surveyor of the District of Columbia in Survey Book 173, page 396.

(Nov. 2, 1965, 79 Stat. 1180, Pub. L. 89-317, § 1.)

Prior Codifications. — 1981 Ed., § 5-836.
1973 Ed., § 5-733.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the

right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 6-341.02. Lease or sale by Agency authorized.

The Agency is hereby authorized in accordance with subchapter I of this chapter to lease or sell, as an entirety or parts thereof separately, to 1 or more redevelopment companies or other lessees or purchasers, such real property as may be transferred to the Agency under the authority of this subchapter.

(Nov. 2, 1965, 79 Stat. 1184, Pub. L. 89-317, § 2.)

Section references. — This section is referred to in §§ 6-341.02, 6-341.04, and 6-341.05.

Prior Codifications. — 1981 Ed., § 5-837. 1973 Ed., § 5-734.

§ 6-341.03. Transfer of rights-of-way by Agency to District authorized.

The Agency is authorized to transfer to the government of the District of Columbia all right, title, and interest of the Agency in that portion of the right-of-way formerly occupied by the railroads, which is now a part of the land included in the District of Columbia highway system, for which the Agency compensated the railroads and acquired the interest of said railroads, and the Mayor of the District of Columbia is hereby authorized in this instance to pay the Agency the sum of \$82,896 for said sites, which are described as follows:

(1) Part of Thirteen-and-a-Half Street Southwest, and E Street Southwest described in 1 piece as follows: beginning for the same at the intersection of the east line of Thirteen-and-a-Half Street Southwest with the northeasterly line of Maine Avenue Southwest; and running thence north 51 degrees 37 minutes 00 seconds west 119.22 feet to the southerly line of said Thirteen-and-a-Half Street and E Street closed by plat recorded in the Office of the Surveyor of the District of Columbia in book 140, page 73; thence along said line south 71 degrees 17 minutes 15 seconds east 106.13 feet to the south line of said E Street; thence along said line due west 7.04 feet to the east line of said Thirteen-and-a-Half Street; thence along said line due south 40.0 feet to the point of beginning containing 1,990.50 square feet; all as shown on plat of computation recorded in the Office of the Surveyor of the District of Columbia in Survey Book 174, page 308.

(2) Part of 13th Street Southwest, described as follows: beginning for the same at the intersection of the east line of Thirteenth Street Southwest with the northeasterly line of Maine Avenue Southwest; and running thence north 71 degrees 17 minutes 15 seconds west 116.14 feet to the west line of said Thirteenth Street; thence along said line due north 42.37 feet to the southerly line of Thirteenth Street closed by plat recorded in the Office of the Surveyor of the District of Columbia in book 140, page 73; thence along said line south 71 degrees 17 minutes 15 seconds east 15.21 feet; thence still along said line due east 95.59 feet to the said east line of Thirteenth Street; thence along said line due south 74.75 feet to the point of beginning containing 6,209.20 square feet; all as shown on plat of computation recorded in the Office of the Surveyor of the District of Columbia in Survey Book 174, page 308.

(Nov. 2, 1965, 79 Stat. 1184, Pub. L. 89-317, § 3.)

Prior Codifications. — 1981 Ed., § 5-838. 1973 Ed., § 5-735.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 6-341.04. Transfer not a local grant-in-aid.

No transfer or donation of any interest in real property under the authority of this subchapter shall constitute a local grant-in-aid in connection with any urban renewal project being undertaken with federal assistance under title I of the Housing Act of 1949, as amended.

(Nov. 2, 1965, 79 Stat. 1184, Pub. L. 89-317, § 4.)

Section references. — This section is referred to in §§ 6-341.01, 6-341.02, and 6-341.05.

Prior Codifications. — 1981 Ed., § 5-839. 1973 Ed., § 5-736.

References in text. — Title I of the Housing Act of 1949, as amended, referred to in this section, is the Act of July 15, 1949, 63 Stat. 413, ch. 338.

§ 6-341.05. Definitions.

As used in this subchapter, the terms “Agency,” “lessee,” “purchaser,” “real property,” “redevelopment,” and “redevelopment company” shall have the respective meanings provided for such terms by § 6-301.02 [repealed].

(Nov. 2, 1965, 79 Stat. 1185, Pub. L. 89-317, § 5.)

Prior Codifications. — 1981 Ed., § 5-840.

1973 Ed., § 5-737.

CHAPTER 4. BUILDING LINES.

Sec.

6-401. Building lines established on streets less than 90 feet wide.

6-402. Condemnation proceedings — Filing of plats and petition.

6-403. Condemnation proceedings — Procedures.

Sec.

6-404. Permits for extensions of buildings beyond building line.

6-405. Exceptions for existing buildings; control of parking.

6-406. Appropriations.

§ 6-401. Building lines established on streets less than 90 feet wide.

The Mayor of the District of Columbia is authorized to establish building lines on streets or parts of streets less than 90 feet wide, in the District of Columbia, upon the presentation to him of a plat of the street or part of street upon which such action is desired, showing the lots and the names of the record owners thereof, and accompanied by a petition of the owners of more than one-half of the real estate shown on said plat requesting that building lines be established, or when the Mayor deems that the public interests require that such building lines be established; provided, that no such building lines shall be established on any part of street less than 1 block in length.

(June 21, 1906, 34 Stat. 384, ch. 3505, § 1.)

Cross references. — Building regulations, powers and duties of Council and Mayor, see § 1-303.04.

Prior Codifications. — 1981 Ed., § 5-201.
1973 Ed., § 5-201.

Editor's notes. — Elimination of building restriction line: D.C. Law 7-64, effective January 28, 1988, found the building restriction line in Square 1661 on the west side of 43rd Street, N.W., between Jenifer Street, N.W., and Military Road, N.W., as shown on the surveyor's plat filed under S.O. 86-261, to be unnecessary for street purposes and ordered the restriction eliminated.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts

Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 6-402. Condemnation proceedings — Filing of plats and petition.

Upon the filing of such plat and petition in the Office of the Mayor of the District of Columbia or when the Mayor shall deem that the public interests require it, the said Mayor shall institute condemnation proceedings in the Superior Court of the District of Columbia, by a petition in rem, particularly describing the land to be taken, which petition shall be accompanied by duplicate plats, to be prepared by the Surveyor of said District, showing the location of said proposed building lines, the number of square feet to be taken

from each lot or part of lot and the boundaries thereof in each square or block, and such other information as may be necessary for the purposes of such condemnation. Upon the filing of such petition, 1 copy of the plat, indorsed with the docket number of the case, shall be returned by the Clerk of said Court to the said Surveyor for record in his office.

(June 21, 1906, 34 Stat. 384, ch. 3505, § 2; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 571, Pub. L. 91-358, title I, § 155(c)(15).)

Prior Codifications. — 1981 Ed., § 5-202.
1973 Ed., § 5-202.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 6-403. Condemnation proceedings — Procedures.

The condemnation proceedings herein provided for shall be in accordance with the provisions of Chapter 13 of Title 16 as far as the same are applicable; and the assessment proceedings and assessment area for the establishment of building lines herein provided for shall be the same as that provided in § 9-203.01 et seq., for assessments in the opening, extension, widening, and straightening of alleys or minor streets, in the same manner as if the establishment of building lines had been included in said section.

(June 21, 1906, 34 Stat. 384, ch. 3505, § 3; May 10, 1989, D.C. Law 7-231, § 16, 36 DCR 492.)

Prior Codifications. — 1981 Ed., § 5-203.
1973 Ed., § 5-203.

Legislative history of Law 7-231. — Law 7-231, the "Technical Amendments Act of 1988," was introduced in Council and assigned Bill No. 7-586, which was referred to the Committee

of the Whole. The Bill was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-285 and transmitted to both Houses of Congress for its review.

§ 6-404. Permits for extensions of buildings beyond building line.

The action of the Council of the District of Columbia in granting permits before March 3, 1891, for the extension of any building or buildings, or any part or parts thereof, in the District of Columbia, beyond the building line, and upon the streets and avenues of said District, is hereby ratified, without prejudice, however, to the legal rights of the government in the event of the destruction by fire, or otherwise, of any such structure. And after June 21, 1906, no such permits shall be granted except upon special application and with the

concurrence of the Mayor of the District of Columbia, and where such extensions are to be placed upon buildings to be erected on land adjoining United States public reservations, the approval of the Director of the National Park Service.

(Mar. 3, 1891, 26 Stat. 868, ch. 540; July 1, 1898, 30 Stat. 570, ch. 543, § 3; June 21, 1906, 34 Stat. 385, ch. 3506; Feb. 26, 1925, 43 Stat. 983, ch. 339, § 3; Exec. Order No. 6166, § 2, June 10, 1933; Mar. 2, 1934, 48 Stat. 389, ch. 38, § 1.)

Cross references. — Care of public grounds, rules and regulations, see § 10-137.

Jurisdiction over public roads and bridges, see § 9-101.02.

Public grounds, rules and regulations, extension to sidewalks and carriageways, see § 10-138.

Rental and utilization of public space, public space on or above ground, see § 10-1102.01.

Transfer of federal lands to district, letters as authority for change in official maps and record, see § 10-129.

Section references. — This section is referred to in § 6-405.

Prior Codifications. — 1981 Ed., § 5-204. 1973 Ed., § 5-204.

Transfer of Functions. — All functions of all officers of the Department of the Interior and all functions of all agencies and employees of the Department, including the Director of the National Park Service, were transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by Re-

organization Plan No. 3 of 1950, 64 Stat. 1262, §§ 1, 2, 15 F.R. 3174.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, 1-207.14)), appropriate changes in terminology were made in this section.

§ 6-405. Exceptions for existing buildings; control of parking.

The Mayor of the District of Columbia, whenever he deems it desirable in the interest of economy, may permit buildings existing at the time said building lines are established and which project beyond said lines to remain until such time as the owner of said buildings desires to reconstruct or substantially alter the said buildings; provided, that § 6-404 shall apply to all parkings established under this chapter, and the control of said parkings otherwise shall be vested in the Mayor of the District of Columbia, and the Council of the District of Columbia is hereby authorized to make, and the Mayor is hereby authorized to enforce, all reasonable and necessary regulations for their care and preservation.

(June 21, 1906, 34 Stat. 385, ch. 3505, § 4.)

Prior Codifications. — 1981 Ed., § 5-205. 1973 Ed., § 5-205.

Change in Government. — This section

originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts

Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(116) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818,

§ 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 6-406. Appropriations.

The appropriation available for opening alleys and minor streets in the District of Columbia is hereby made available for the purpose of establishing building lines as provided for in this chapter.

(June 21, 1906, 34 Stat. 385, ch. 3505, § 5.)

Cross references. — New streets and alleys, scope of Mayor's authority, see § 9-203.01.

Prior Codifications. — 1981 Ed., § 5-206. 1973 Ed., § 5-206.

CHAPTER 5. FLOOD HAZARDS.

Sec.

6-501. Review of building permit applications; design and construction requirements.

6-502. Review of subdivision and other new development proposals.

6-503. Design of water and sanitary sewage systems; location of on-site waste disposal systems.

Sec.

6-504. Review of excavation, grading, filling, or construction permit applications; mudslide hazards.

6-505. Annual report.

6-506. Penalties.

§ 6-501. Review of building permit applications; design and construction requirements.

The Mayor shall review all building permit applications for new construction or substantial improvements to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is in a location that has flood hazard, the proposed new construction or substantial improvement (including prefabricated homes) must:

(1) Be designed (or modified) and anchored to prevent flotation, collapse, or lateral movement of the structure;

(2) Use construction materials and utility equipment that are resistant to flood damage; and

(3) Use construction methods and practices that will minimize flood damage.

(May 26, 1976, D.C. Law 1-64, § 2, 22 DCR 7146.)

Prior Codifications. — 1981 Ed., § 5-301. 1973 Ed., § 5-1101.

Legislative history of Law 1-64. — Law 1-64, the “District of Columbia Applications Insurance Implementation Act,” was introduced in Council and assigned Bill No. 1-209, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on January 27, 1976, and February 24, 1976, respectively. Signed by the Mayor on March 19, 1976, it was assigned

Act No. 1-95 and transmitted to both Houses of Congress for its review.

Delegation of Authority. — Delegation of authority pursuant to D.C. Law 1-64, the “D.C. Applications Insurance Implementation Act”, see Mayor’s Order 98-46, April 15, 1998 (45 DCR 2691).

Mayor’s Orders. — Authority under District of Columbia Applications Insurance Implementation Act delegated: See Mayor’s Order 84-193, November 2, 1984.

§ 6-502. Review of subdivision and other new development proposals.

The Mayor shall review subdivision proposals and other proposed new developments to assure that:

(1) All such proposals are consistent with the need to minimize flood damage;

(2) All public utilities and facilities, such as sewer, gas, electrical, and water systems are located, elevated, and constructed to minimize or eliminate flood damage; and

(3) Adequate drainage is provided so as to reduce exposure to flood hazards.

(May 26, 1976, D.C. Law 1-64, § 3, 22 DCR 7146.)

Prior Codifications. — 1981 Ed., § 5-302.
1973 Ed., § 5-1102.

legislative history of D.C. Law 1-64, see Historical and Statutory Notes following § 6-501.

Legislative history of Law 1-64. — For

§ 6-503. Design of water and sanitary sewage systems; location of on-site waste disposal systems.

The Mayor shall require new or replacement water systems and sanitary sewage systems to be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and require on-site waste disposal systems to be located so as to avoid impairment of them or contamination from them during flooding.

(May 26, 1976, D.C. Law 1-64, § 4, 22 DCR 7146.)

Prior Codifications. — 1981 Ed., § 5-303.
1973 Ed., § 5-1103.

legislative history of D.C. Law 1-64, see Historical and Statutory Notes following § 6-501.

Legislative history of Law 1-64. — For

§ 6-504. Review of excavation, grading, filling, or construction permit applications; mudslide hazards.

The Mayor shall review each permit application for any excavation, grading, fill, or construction to determine whether the proposed site and improvements will be reasonably safe from mudslides. If a proposed site and improvements are in a location that may have mudslide hazards, a further review shall be made by persons qualified in geology and soils engineering; and the proposed new construction, substantial improvement, or grading must:

- (1) Be adequately protected against mudslide damage; and
- (2) Not aggravate the existing hazard.

(May 26, 1976, D.C. Law 1-64, § 5, 22 DCR 7146.)

Prior Codifications. — 1981 Ed., § 5-304.
1973 Ed., § 5-1104.

legislative history of D.C. Law 1-64, see Historical and Statutory Notes following § 6-501.

Legislative history of Law 1-64. — For

§ 6-505. Annual report.

The Mayor shall submit an annual report before April 1st of each year to the Council to advise the public of progress made under the National Flood Control Program.

(May 26, 1976, D.C. Law 1-64, § 6, 22 DCR 7146.)

Prior Codifications. — 1981 Ed., § 5-305.
1973 Ed., § 5-1105.

Legislative history of Law 1-64. — For

legislative history of D.C. Law 1-64, see Historical and Statutory Notes following § 6-501.

§ 6-506. Penalties.

Violations of any provision of this chapter, including the implementing regulations, are punishable by the following penalties:

(1) Any person who violates any provision of this chapter shall be guilty of a misdemeanor and shall, upon conviction, be punishable by a fine of not more than \$300 for each day of the violation, or imprisoned for not more than 30 days, or both.

(2) Any person who violates any provision of this chapter shall be liable to the District of Columbia for any and all consequential damages resulting from the violation, in addition to related costs and attorney fees.

(3) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this chapter pursuant to Chapter 18 of Title 2. Adjudication of any infraction of this chapter shall be pursuant to Chapter 18 of Title 2.

(May 26, 1976, D.C. Law 1-64, § 6A, as added Mar. 8, 1991, D.C. Law 8-237, § 38, 38 DCR 314.)

Cross references. — Civil infractions, administrative review, appeals, see § 2-1803.01.

Prior Codifications. — 1981 Ed., § 5-306.

Legislative history of Law 8-237. — Law 8-237, the “Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 Technical and Clarifying Amendments Act of 1990,” was introduced in Council and assigned

Bill No. 8-203, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-320 and transmitted to both Houses of Congress for its review.

CHAPTER 6. ZONING AND HEIGHT OF BUILDINGS.

Subchapter I. General

Sec.

- 6-601.01. Nonfireproof dwellings.
- 6-601.02. Nonfireproof business buildings.
- 6-601.03. Buildings exceeding 60 feet in height; hotels, apartments, and tenements of 3 or more stories; halls with seating capacity of 300 or more; churches.
- 6-601.04. Additions; towers, spires, and domes; theaters.
- 6-601.05. Street width to control building height; business streets; residence streets; specified properties; structures above top story of building.
- 6-601.06. Frame dwellings.
- 6-601.07. Measurement of building height; parapet walls.
- 6-601.08. Violation of subchapter.
- 6-601.09. Right of Congress to alter or repeal.

Subchapter II. Regulation of Heights and Exterior Designs of Buildings

- 6-611.01. Erection or alteration of buildings fronting on certain federal property; applications submitted to Commission of Fine Arts for review.
- 6-611.02. Plats of restricted area.

Subchapter III. Zoning and Zoning Commission

PART A

Zoning Commission Established

- 6-621.01. Zoning Commission — Created; composition; appointment; term of office; compensation; Chairman; powers generally.

PART B

Office of Zoning

- 6-623.01. Office of Zoning; established.
- 6-623.02. Office of Zoning — Director and staff; appointment.
- 6-623.03. Office of Zoning — Transfer of functions of Zoning Secretariat of Office of Planning.

Sec.

- 6-623.04. Office of Zoning — Recommendations, reports, review and comment by Office of Planning.

Subchapter IV. Zoning Regulations; Board of Zoning Adjustment

- 6-641.01. Zoning Commission — Regulations; districts or zones.
- 6-641.02. Zoning regulations — Purpose.
- 6-641.03. Zoning regulations — Existing regulations continued; public hearing on amendments required; notice.
- 6-641.04. Zoning regulations — Vote required for amendment.
- 6-641.05. Zoning regulations — Proposed regulations or amendments; public hearing; notice; National Capital Planning Commission.
- 6-641.06. Permissible maximum height of buildings.
- 6-641.06a. Nonconforming use.
- 6-641.07. Board of Zoning Adjustment.
- 6-641.08. Maps and regulations of Zoning Commission to be filed; regulations to be published.
- 6-641.09. Building permits; certificates of occupancy.
- 6-641.10. Enforcement of zoning regulations.
- 6-641.11. Construction.
- 6-641.12. Definitions.
- 6-641.13. Appropriations authorized; compensation.
- 6-641.14. Laws repealed.
- 6-641.15. Federal public buildings excepted from this subchapter.

Subchapter V. Chanceries

- 6-651.01. Transfer or use of chancery.
- 6-651.02. Discrimination against foreign government based on race, color, or creed prohibited.

Subchapter VI. Miscellaneous

- 6-661.01. Mayor to prescribe fees for permits, certificates, and transcripts by Inspector of Buildings; schedule of fees to be displayed.
- 6-661.02. Cancellation of building permits.

Subchapter I. General.

§ 6-601.01. Nonfireproof dwellings.

No combustible or nonfireproof building in the District of Columbia used or occupied or intended to be used or occupied as a dwelling, flat, apartment

§ 6-601.02 HOUSING & BUILDING RESTRICTIONS & REGULATIONS

house, tenement, lodging or boarding house, hospital, dormitory, or for any similar purpose shall be erected, altered, or raised to a height of more than 4 stories, or more than 55 feet in height above the sidewalk, and no combustible or nonfireproof building shall be converted to any of the uses aforesaid if it exceeds either of said limits of height.

(June 1, 1910, 36 Stat. 452, ch. 263, § 1; May 20, 1912, 37 Stat. 114, ch. 124.)

Cross references. — Building regulations, powers and duties of Council and Mayor, see § 1-303.04.

Civil infractions, administrative review, appeals, see § 2-1803.01.

Section references. — This section is referred to in §§ 6-601.04 and 6-641.06.

Prior Codifications. — 1981 Ed., § 5-401. 1973 Ed., § 5-401.

CASE NOTES

ANALYSIS

In general.

Judicial review and injunction.

Liability.

In general.

Zoning regulation cannot be imposed if it does not bear substantial relation to public health, safety, morals, or general welfare. *Dorsey v. Gotwals*, 57 F.2d 407, 1932 U.S. App. LEXIS 3974 (1932).

Governmental power to interfere by zoning regulations with general rights of landowner is not unlimited. *Dorsey v. Gotwals*, 57 F.2d 407, 1932 U.S. App. LEXIS 3974 (1932).

An applicant for an occupancy permit under the Zoning Law is entitled to notice of action thereon with reasons therefor, but having been given notice of rejection with reasons, applicant had duty to cease the use applied for. D.C. Code 1940, § 5-401 et seq. *Savage v. District of Columbia*, 54 A.2d 562, 1947 D.C. App. LEXIS 153 (Cr.App. 1947).

Judicial review and injunction.

Court had no right to substitute its judgment for that of District of Columbia Zoning Commission, and where nothing appeared to indicate that Commission's action in fixing minimum widths and sizes of residential lots was unrea-

sonable or arbitrary, court could not enjoin enforcement of regulation. D.C. Code 1951, §§ 5-401 to 5-430, 5-413, 5-414, 5-417. *Salzer v. McLaughlin*, 240 F.2d 891, 1957 U.S. App. LEXIS 3425 (C.A.D.C. 1957).

Whether zoning regulation interferes with general rights of landowner without regard to public health, safety, morals, or general welfare, is question which should be judicially determined when properly raised. *Dorsey v. Gotwals*, 57 F.2d 407, 1932 U.S. App. LEXIS 3974 (1932).

Liability.

An acquittal on charge of using a single family dwelling without an occupancy permit between certain dates would not bar prosecution for use without a permit between subsequent dates, each information containing a continuando clause. D.C. Code 1940, § 5-401 et seq. *Savage v. District of Columbia*, 54 A.2d 562, 1947 D.C. App. LEXIS 153 (Cr.App. 1947).

An applicant who during a two year period failed to correct conditions which caused rejection of application for occupancy permit could not urge as bar to prosecution for operating without a permit that he was never given an opportunity to correct the conditions. D.C. Code 1940, § 5-401 et seq. *Savage v. District of Columbia*, 54 A.2d 562, 1947 D.C. App. LEXIS 153 (Cr.App. 1947).

§ 6-601.02. Nonfireproof business buildings.

No combustible or nonfireproof building in the District of Columbia used or occupied or intended to be used or occupied for business purposes only shall be erected, altered, or raised to a height of more than 60 feet above the sidewalk, and no combustible or nonfireproof building shall be converted to such use if it exceeds said height.

(June 1, 1910, 36 Stat. 452, ch. 263, § 2.)

Section references. — This section is referred to in §§ 6-601.04, 6-601.05, 6-601.07 to 6-601.09, and 6-641.06.

Prior Codifications. — 1981 Ed., § 5-402. 1973 Ed., § 5-402.

§ 6-601.03. Buildings exceeding 60 feet in height; hotels, apartments, and tenements of 3 or more stories; halls with seating capacity of 300 or more; churches.

(a) All buildings of every kind, class, and description whatsoever, excepting churches only, erected, altered, or raised in any manner after June 1, 1910, as to exceed 60 feet in height shall be fireproof or noncombustible and of such fire-resisting materials, from the foundation up, as are now or at the time of the erecting, altering, or raising may be required by the building regulations of the District of Columbia.

(b) Hotels, apartment houses, and tenement houses erected, altered or raised in any manner after June 1, 1910, so as to be 3 stories in height or over and buildings converted after June 1, 1910, to such uses shall be of fireproof construction up to and including the main floor, and there shall be no space on any floor of such structure of an area greater than 2,500 square feet that is not completely inclosed by fireproof walls, and all doors through such walls shall be of noncombustible materials.

(c) Every building erected after June 1, 1910, with a hall or altered so as to have a hall with a seating capacity of more than 300 persons when completed, as provided by the building regulations, and every church thereafter erected or building converted after June 1, 1910, for use as a church, with such seating capacity, shall be of fireproof construction up to and including the floor of such hall or the auditorium of such church as the case may be.

(June 1, 1910, 36 Stat. 452, ch. 263, § 3.)

Section references. — This section is referred to in §§ 6-601.04 and 6-641.06.

Prior Codifications. — 1981 Ed., § 5-403. 1973 Ed., § 5-403.

§ 6-601.04. Additions; towers, spires, and domes; theaters.

(a) Additions to existing combustible or nonfireproof structures after June 1, 1910, erected, altered, or raised to exceed the height limited by §§ 6-601.01 to 6-601.08 for such structures shall be of fireproof construction from the foundation up, and no part of any combustible or nonfireproof building shall be raised above such limit or height unless that part be fireproof from the foundations up.

(b) Towers, spires, or domes, thereafter constructed more than 60 feet above the sidewalk, must be of fireproof material from the foundation up, and must be separated from the roof space, choir loft, or balcony by brick walls without openings, unless such openings are protected by fireproof or metal-covered doors on each face of the wall. Full power and authority is hereby granted to and conferred upon every person, whose application was filed in the Office of the Mayor of the District of Columbia prior to the adoption of the present

building regulations of said District, to construct a steel fireproof dome on any buildings owned by such person, in square 345 of said District, as set forth in the plans and specifications annexed to or forming a part of such applications so filed, any other provision in §§ 6-601.01 to 6-601.08 contained to the contrary notwithstanding. And the Inspector of Buildings of said District shall make no changes in said plans and specifications unless for the structural safety of the building it is necessary to do so.

(c) Every theater erected after June 1, 1910, and every building converted thereafter to use as a theater, and any building or the part or parts thereof under or over the theater so erected or the buildings so converted, shall be of fireproof construction from the foundation up and have fireproof walls between it and other buildings connected therewith, and any theater damaged to one-half its value shall not be rebuilt except with fireproof materials throughout and otherwise in accordance with the building regulations of the District of Columbia.

(June 1, 1910, 36 Stat. 453, ch. 263, § 4.)

Section references. — This section is referred to in §§ 6-601.05, 6-601.07 to 6-601.09, and 6-641.06.

Prior Codifications. — 1981 Ed., § 5-404. 1973 Ed., § 5-404.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 6-601.05. Street width to control building height; business streets; residence streets; specified properties; structures above top story of building.

(a) No building shall be erected, altered, or raised in the District of Columbia in any manner so as to exceed in height above the sidewalk the width of the street, avenue, or highway in its front, increased by 20 feet; but where a building or proposed building confronts a public space or reservation formed at the intersection of 2 or more streets, avenues, or highways, the course of which is not interrupted by said public space or reservation, the limit of height of the building shall be determined from the width of the widest street, avenue, or highway. Where a building is to be erected or removed from all points within the boundary lines of its own lots, as recorded, by a distance at least equal to its proposed height above grade the limits of height for fireproof or noncombustible buildings in residence sections shall control, the measurements to be taken from the natural grades at the buildings as determined by the Mayor of the District of Columbia.

(b) No buildings shall be erected, altered, or raised in any manner as to exceed the height of 130 feet on a business street or avenue as the same is now

or hereafter may be lawfully designated, except on the north side of Pennsylvania Avenue between 1st and 15th Streets Northwest, where an extreme height of 160 feet will be permitted.

(c) On a residence street, avenue, or highway no building shall be erected, altered, or raised in any manner so as to be over 90 feet in height at the highest part of the roof or parapet, nor shall the highest part of the roof or parapet exceed in height the width of the street, avenue, or highway upon which it abuts, diminished by 10 feet, except on the street, avenue, or highway 60 to 65 feet wide, where a height of 60 feet may be allowed; and on a street, avenue, or highway 60 feet wide or less, where a height equal to the width of the street may be allowed; provided, that any church, the construction of which had been undertaken but not completed prior to June 1, 1910, shall be exempted from the limitations of this subsection, and the Mayor of the District of Columbia shall cause to be issued a permit for the construction of any such church to a height of 95 feet above the level of the adjacent curb.

(d) The height of a building on a corner lot will be determined by the width of the wider street.

(e) On streets less than 90 feet wide where building lines have been established and recorded in the Office of the Surveyor of the District, and so as to prevent the lawful erection of a building in advance of said line, the width of the street, insofar as it controls the height of buildings under this subchapter, shall be held to be the distance between said building lines.

(f) On blocks immediately adjacent to public buildings or to the side of any public building for which plans have been prepared and money appropriated at the time of the application for the permit to construct said building, the maximum height shall be regulated by a schedule adopted by the Council of the District of Columbia. This restriction shall not apply to any structure that is set back from the 14th Street property line to a line that is continuous with the facade of the adjacent Bureau of Engraving and Printing annex building that is located along 14th Street, S.W., between C and D Streets, S.W. The height of a structure described in the preceding sentence shall be established in accordance with the requirements of this subchapter and the Zoning Regulations (11 DCMR).

(g) Buildings erected after June 1, 1910, to front or abut on the plaza in front of the new Union Station provided for by Act of Congress approved February 28, 1903, shall be fireproof and shall not be of a greater height than 80 feet.

(h) Spires, towers, domes, minarets, pinnacles, penthouses over elevator shafts, ventilation shafts, chimneys, smokestacks, and fire sprinkler tanks may be erected to a greater height than any limit prescribed in this subchapter when and as the same may be approved by the Mayor of the District of Columbia; provided, however, that such structures when above such limit of height shall be fireproof, and no floor or compartment thereof shall be constructed or used for human occupancy above the top story of the building upon which such structures are placed; and provided, that penthouses, ventilation shafts, and tanks shall be set back from the exterior walls distances equal to their respective heights above the adjacent roof; and provided further, that a building be permitted to be erected to a height not to exceed 130 feet on

lots 15, 804, and 805, square 322, located on the southeast corner of 12th and E Streets Northwest, said building to conform in height and to be used as an addition to the hotel building located to the east thereof on lot 18, square 322; and further provided, that the building to be erected on lots 813, 814, and 820, in square 254, located on the southeast corner of 14th and F Streets Northwest, be permitted to be erected to a height not to exceed 140 feet above the F Street curb; and provided further, that the building to be erected on property known as the Dean Tract, comprising nine and one-fourth acres, bounded on the west by Connecticut Avenue and Columbia Road, on the south by Florida Avenue, and the east by 19th Street, and on the north by a property line running east and west 564 feet in length, said building to cover an area not exceeding 14,000 square feet and to be located on said property not less than 40 feet distant from the north property line, not less than 320 feet distant from the Connecticut Avenue property line, not less than 160 feet distant from the 19th Street property line, and not less than 360 feet distant from the Florida Avenue line, measured at the point on the Florida Avenue boundary where the center line of 20th Street meets said boundary, be permitted to be erected to a height not to exceed 180 feet above the level of the existing grade at the center of the location above described; and provided further, that the design of said building and the layout of said ground be subject to approval by the Fine Arts Commission and the National Capital Planning Commission, both of the District of Columbia; and further provided, that the building to be erected by the Georgetown University for a hospital as a part of the Georgetown University Medical School on parcels 28/31, 28/36 and 28/37 located on the south side of Reservoir Road Northwest in the District of Columbia, approximately opposite 39th Street, plans for which building are on file in the Office of the Inspector of Buildings of the District of Columbia, be permitted to be erected to a height of not to exceed 110 feet above the finished grade of the land, as shown on said plans, at the middle of the front of the building.

(June 1, 1910, 36 Stat. 452, ch. 263, § 5; Dec 30, 1910, 36 Stat. 891, ch. 8; June 7, 1924, 43 Stat. 647, ch. 340; Feb. 21, 1925, 43 Stat. 961, ch. 289; May 16, 1926, 44 Stat. 298, ch. 150; Apr. 29, 1930, 46 Stat. 258, ch. 220; Mar. 24, 1945, 59 Stat. 38, ch. 37; Sept. 22, 1961, 75 Stat. 583, Pub. L. 87-281, § 1; Apr. 20, 1999, D.C. Law 12-234, § 2, 46 DCR 643.)

Cross references. — Limitations on authority of council, see § 1-206.02.

Section references. — This section is referred to in §§ 6-601.04 and 6-641.06.

Prior Codifications. — 1981 Ed., § 5-405. 1973 Ed., § 5-405.

Legislative history of Law 12-234. — Law 12-234, the "Schedule of Heights of Buildings Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-170, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998 and December 1, 1998, respectively. Signed by the Mayor on December 21, 1998, it was assigned Act No. 12-558 and transmitted to both Houses of Con-

gress for its review. D.C. Law 12-234 became effective April 20, 1999.

Transfer of Functions. — "National Capital Planning Commission" was substituted for "National Capital Park and Planning Commission" in view of the Act of June 6, 1924, ch. 270, § 9, as added by the Act of July 19, 1952, 66 Stat. 790, ch. 949, § 1, which transferred the functions, powers, and duties of the National Capital Park and Planning Commission to the National Capital Planning Commission.

Editor's notes. — Office of Inspector of Buildings abolished: Section 3 of the Act of December 20, 1944, 58 Stat. 822, ch. 611, transferred all the duties, powers, rights, and authority of the Inspector of Buildings of the

District of Columbia to the Director of Inspection of the District of Columbia. The Department of Inspections was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 55 of the Board of Commissioners, dated June 30, 1953, and amended August 13, 1953, and December 17, 1953, established, under the direction and control of a Commissioner, a Department of Licenses and Inspections headed by a Director. The Order set out the purpose, organization, and functions of the new Department. The Order provided that all of the functions and positions of the following named organizations were transferred to the new Department of Licenses and Inspections: The Department of Inspections including the Engineering Section, the Building Inspection Section, the Electrical Section, the Elevator Inspection Section, the Fire Safety Inspection Section, the Plumbing Inspection Section, the Smoke and Boiler Inspection Section, and the Administrative Section, and similarly the Department of Weights, Measures and Markets, the License Bureau, the License Board, the License Committee, the Board of Special Appeals, the Board for the Condemnation of Dangerous and Unsafe Buildings, and the Central Permit Bureau. The Order provided that in accordance with the provisions of Reorganization Plan No. 5 of 1952, the named organizations were abolished. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions vested in the Department of Licenses and Inspection by Reorganization Order No. 55 were transferred to the Director of the Department of Economic Development by Commissioner's Order No. 69-96, dated March 7, 1969. The Department of Economic Development was replaced by Mayor's Order No. 78-42, dated February 17, 1978, which Order established

the Department of Licenses, Investigation and Inspections. The Department of Licenses, Investigation and Inspections was transferred to the Department of Consumer and Regulatory Affairs by Reorganization Plan No. 1 of 1983.

D.C. Schedule of Heights Amendment Act disapproved by Congress: Pursuant to Pub. L. 102-11, 105 Stat. 33, effective March 12, 1991, it was resolved by the Senate and House of Representatives of the United States of America in Congress assembled, that the Congress hereby disapproves of the action of the District of Columbia Council described as follows: The Schedule of Heights Amendment Act of 1990 (D.C. Act 8-329), signed by the Mayor of the District of Columbia on December 27, 1990, and transmitted to Congress pursuant to section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act on January 15, 1991.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(120) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Administrative determinations.
Judicial review.

Administrative determinations.

Determination of the corporation council, that the Height of Buildings Act permitted proposed international trade center in the District of Columbia to be 130 feet high, was based on consistent, demonstrable, administrative practice and was reasonable and consistent with language of the HBA; therefore, alternative interpretations of the HBA did not provide basis to overturn corporation council's determi-

nation. D.C. Code 1981, §§ 1-361, 5-405. *Techworld Dev. Corp. v. D.C. Preservation League*, 648 F. Supp. 106, 1986 U.S. Dist. LEXIS 21851 (1986), vacated by, remanded by 1987 U.S. App. LEXIS 18346 (D.C. Cir. June 2, 1987).

District of Columbia asserted several rational bases for rescinding its permit to build a 756-foot telecommunications tower, including that the tower would violate District of Columbia law governing tower heights; thus, tower builder's claim that the District of Columbia violated the Equal Protection Clause by rescinding its permit was properly dismissed.

§ 6-601.06 HOUSING & BUILDING RESTRICTIONS & REGULATIONS

Am. Towers, Inc. v. Williams, 50 Fed.Appx. 448, 2002 U.S. App. LEXIS 22845 (C.A.D.C. 2002).

District of Columbia's actions in rescinding permit to build 756-foot telecommunications tower, which was for broadcasting high definition television (HDTV) as opposed to supporting wireless phone service, did not violate the Telecommunications Act of 1996, which places certain limitations on local zoning authorities' ability to regulate the placement, construction, and modification of personal wireless service facilities, where District of Columbia's decision to rescind the building permit was not unreasonable, but was aimed at promoting legitimate governmental purposes, and the District of Columbia's written explanation of its reasoning was supported by substantial evidence and appeared to have nothing to do with concerns with the environmental effects of radio frequency emissions. *Am. Towers, Inc. v. Williams*, 50 Fed.Appx. 448, 2002 U.S. App. LEXIS 22845 (C.A.D.C. 2002).

Judicial review.

Issue concerning maximum height permissible under the Height of Buildings Act for international trade center, which was to cover two city blocks in the District of Columbia, was ripe for resolution, even though local authorities had not yet issued construction permit allowing developers to rise to any specific height, where developers made clear their intention to build

center to height of 130 feet and where federal Government and preservationists had made equally clear their position that such height was unlawful. D.C. Code 1981, § 5-405. *Techworld Dev. Corp. v. D.C. Preservation League*, 648 F. Supp. 106, 1986 U.S. Dist. LEXIS 21851 (1986), vacated by, remanded by 1987 U.S. App. LEXIS 18346 (D.C. Cir. June 2, 1987).

Preservationists, who sought to prevent developers from constructing international trade center in the District of Columbia to height of 130 feet, had no right of action under the Height of Buildings Act. D.C. Code 1981, § 5-405. *Techworld Dev. Corp. v. D.C. Preservation League*, 648 F. Supp. 106, 1986 U.S. Dist. LEXIS 21851 (1986), vacated by, remanded by 1987 U.S. App. LEXIS 18346 (D.C. Cir. June 2, 1987).

Federal Government's property interest in property, which was neighboring property to proposed site for international trade center in the District of Columbia, provided basis for Government to have right of action under the Height of Buildings Act to prevent developers from building center to height of 130 feet. D.C. Code 1981, § 5-405. *Techworld Dev. Corp. v. D.C. Preservation League*, 648 F. Supp. 106, 1986 U.S. Dist. LEXIS 21851 (1986), vacated by, remanded by 1987 U.S. App. LEXIS 18346 (D.C. Cir. June 2, 1987).

§ 6-601.06. Frame dwellings.

No wooden or frame building erected, altered, or converted after June 1, 1910, for use as a human habitation shall exceed 3 stories or exceed 40 feet in height to the roof.

(June 1, 1910, 36 Stat. 454, ch. 263, § 6.)

Section references. — This section is referred to in §§ 6-601.04 and 6-641.06.

Prior Codifications. — 1981 Ed., § 5-406. 1973 Ed., § 5-406.

§ 6-601.07. Measurement of building height; parapet walls.

For the purposes of this subchapter the height of buildings shall be measured from the level of the sidewalk opposite the middle of the front of the building to the highest point of the roof. If the building has more than 1 front, the height shall be measured from the elevation of the sidewalk opposite the middle of the front that will permit of the greater height. No parapet walls shall extend above the limit of height, except on nonfireproof dwellings where a parapet wall or balustrade of a height not exceeding 4 feet will be permitted above the limit of height of building permitted under this subchapter.

(June 1, 1910, 36 Stat. 454, ch. 263, § 7; May 20, 1912, 37 Stat. 114, ch. 124.)

Section references. — This section is referred to in §§ 6-601.04 and 6-641.06.

Prior Codifications. — 1981 Ed., § 5-407. 1973 Ed., § 5-407.

§ 6-601.08. Violation of subchapter.

Buildings erected, altered, or raised or converted in violation of any of the provisions of this subchapter, are hereby declared to be common nuisances; and the owner or the person in charge of or maintaining any such buildings, upon conviction on information filed in the Superior Court of the District of Columbia by the Corporation Counsel or any of his assistants in the name of said District, and which said Court is hereby authorized to hear and determine such cases, shall be adjudged guilty of maintaining a common nuisance, and shall be punished by a fine of not less than \$10 nor more than \$100 per day for each and every day such nuisance shall be permitted to continue, and shall be required by said Court to abate such nuisance. The Corporation Counsel of the District of Columbia may maintain an action in the Superior Court of the District of Columbia in the name of the District of Columbia, to abate and perpetually enjoin such nuisance. The injunction shall be granted at the commencement of the action, and no bond shall be required. Any person violating the terms of any injunction granted in such proceeding shall be punished as for contempt by a fine of not less than \$100 nor more than \$500, or by imprisonment in the Washington Asylum and Jail for not less than 30 days nor more than 6 months, or by both such fine and imprisonment, in the discretion of the Court.

(June 1, 1910, 36 Stat. 454, ch. 263, § 8; June 25, 1936, 49 Stat. 1921, ch. 804; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a), (c)(18).)

Section references. — This section is referred to in §§ 6-601.04, 6-601.05, 6-601.07, 6-601.09, and 6-641.06.

Prior Codifications. — 1981 Ed., § 5-408. 1973 Ed., § 5-408.

CASE NOTES

ANALYSIS

Actions and proceedings.

In general.

Rights and remedies of individuals.

Actions and proceedings.

Issue concerning maximum height permissible under the Height of Buildings Act for international trade center, which was to cover two city blocks in the District of Columbia, was ripe for resolution, even though local authorities had not yet issued construction permit allowing developers to rise to any specific height, where developers made clear their intention to build center to height of 130 feet and where federal Government and preservationists had made equally clear their position that such height

was unlawful. D.C. Code 1981, § 5-405. *Techworld Dev. Corp. v. D.C. Preservation League*, 648 F. Supp. 106, 1986 U.S. Dist. LEXIS 21851 (1986), vacated by, remanded by 1987 U.S. App. LEXIS 18346 (D.C. Cir. June 2, 1987).

In general.

Determination of the corporation council, that the Height of Buildings Act permitted proposed international trade center in the District of Columbia to be 130 feet high, was based on consistent, demonstrable, administrative practice and was reasonable and consistent with language of the HBA; therefore, alternative interpretations of the HBA did not provide basis to overturn corporation council's determi-

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nation. D.C. Code 1981, §§ 1-361, 5-405. Techworld Dev. Corp. v. D.C. Preservation League, 648 F. Supp. 106, 1986 U.S. Dist. LEXIS 21851 (1986), vacated by, remanded by 1987 U.S. App. LEXIS 18346 (D.C. Cir. June 2, 1987).

Rights and remedies of individuals.

Preservationists, who sought to prevent developers from constructing international trade center in the District of Columbia to height of 130 feet, had no right of action under the Height of Buildings Act. D.C. Code 1981, § 5-405. Techworld Dev. Corp. v. D.C. Preservation League, 648 F. Supp. 106, 1986 U.S. Dist.

LEXIS 21851 (1986), vacated by, remanded by 1987 U.S. App. LEXIS 18346 (D.C. Cir. June 2, 1987).

Federal Government's property interest in property, which was neighboring property to proposed site for international trade center in the District of Columbia, provided basis for Government to have right of action under the Height of Buildings Act to prevent developers from building center to height of 130 feet. D.C. Code 1981, § 5-405. Techworld Dev. Corp. v. D.C. Preservation League, 648 F. Supp. 106, 1986 U.S. Dist. LEXIS 21851 (1986), vacated by, remanded by 1987 U.S. App. LEXIS 18346 (D.C. Cir. June 2, 1987).

§ 6-601.09. Right of Congress to alter or repeal.

Congress reserves the right to alter, amend, or repeal this subchapter.

(June 1, 1910, 36 Stat. 455, ch. 263, § 9.)

Section references. — This section is referred to in § 6-641.06.

Prior Codifications. — 1981 Ed., § 5-409. 1973 Ed., § 5-409.

Subchapter II. Regulation of Heights and Exterior Designs of Buildings.

§ 6-611.01. Erection or alteration of buildings fronting on certain federal property; applications submitted to Commission of Fine Arts for review.

In view of the provisions of the Constitution respecting the establishment of the seat of the national government, the duties it imposed upon Congress in connection therewith, and the solicitude shown and the efforts exerted by President Washington in the planning and development of the capital city, it is declared that such development should proceed along the lines of good order, good taste, and with due regard to the public interests involved, and a reasonable degree of control should be exercised over the architecture of private or semipublic buildings adjacent to public buildings and grounds of major importance. To this end, when application is made for permit for the erection or alteration of any building, any portion of which is to front or abut upon the grounds of the Capitol, the grounds of the White House, the portion of Pennsylvania Avenue extending from the Capitol to the White House, Lafayette Park, Rock Creek Park, the Zoological Park, the Rock Creek and Potomac Parkway, Potomac Park, the Mall Park System and public buildings adjacent thereto, or abutting upon any street bordering any of said grounds or parks, the plans therefor, so far as they relate to height and appearance, color, and texture of the materials of exterior construction, shall be submitted by the Mayor of the District of Columbia to the Commission of Fine Arts; and the said Commission shall report promptly to said Mayor its recommendations, including such changes, if any, as in its judgment are necessary to prevent reasonably

avoidable impairment of the public values belonging to such public building or park; and said Mayor shall take such action as shall, in his judgment, effect reasonable compliance with such recommendation; provided, that if the said Commission of Fine Arts fails to report its approval or disapproval of such plans within 30 days, its approval thereof shall be assumed and a permit may be issued.

(May 16, 1930, 46 Stat. 366, ch. 291, § 1; July 31, 1939, 53 Stat. 1144, ch. 400.)

Cross references. — Airspace leases, conditions for execution, see § 10-1121.04.

Rental and utilization of public space, conditional authorization to construct structures, federal and district governments, see § 10-1121.11.

Rental and utilization of public space, public space on or above ground, see § 10-1102.01.

Section references. — This section is referred to in §§ 9-1153 and 25-734.

Prior Codifications. — 1981 Ed., § 5-410. 1973 Ed., § 5-410.

Delegation of Authority. — Delegation of Authority Under the "Shipstead-Luce Act", see Mayor's Order 89-92, May 9, 1989.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts

Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Erection or alteration or buildings.

Scope of authority.

Taking of private property.

Erection or alteration or buildings.

Demolition of all but the girders and joists of the hotel structure did not constitute an "alteration" within the meaning of statute requiring property owners in certain section of nation's capital to obtain approval of Fine Arts Commission for the "alteration" of the "height and appearance, color and texture of the materials of exterior construction" of buildings within the protected area. 40 U.S.C. §§ 104, 121; D.C. Code § 5-410. Commissioner of District of Columbia v. Benenson, 329 A.2d 437, 1974 D.C. App. LEXIS 323 (1974).

The term "alteration" as used in statute requiring approval of Fine Arts Commission for the "erection or alteration" of any building within the regulated area of the nation's capital means change in the sense of adding to, remodeling or reconstruction. 40 U.S.C. § 121; D.C. Code §§ 5-410, 5-802. Commissioner of District of Columbia v. Benenson, 329 A.2d 437, 1974 D.C. App. LEXIS 323 (1974).

Scope of authority.

Interpretation of the phrase "to front" on

Pennsylvania Avenue for a period over 30 years so as to include a certain corner within authority of Commission of Fine Arts would not be disturbed by courts unless the act, reasonably construed, so required. 40 U.S.C. § 121; 5 D.C. Code, §§ 410, 411. Stanley Co. of America v. Tobriner, 298 F.2d 318, 1961 U.S. App. LEXIS 2904 (C.A.D.C. 1961).

Purpose of act conferring authority upon Commission of Fine Arts to pass upon a permit where erection or alteration of any building, any portion of which is to front upon a certain portion of Pennsylvania Avenue, is to enhance and preserve beauty and aesthetic value of specified parts of Nation's Capital but Commission's authority does not extend to all buildings that can be seen from the specified portion of Pennsylvania Avenue. 40 U.S.C. § 121; 5 D.C. Code, §§ 410, 411. Stanley Co. of America v. Tobriner, 298 F.2d 318, 1961 U.S. App. LEXIS 2904 (C.A.D.C. 1961).

Northeast corner of intersection of Thirteenth and E Streets, Northwest, in District of Columbia, which was clearly in line of a well-nigh unobstructed view from Pennsylvania Avenue as well as in close proximity thereto, was within area of authority of Commission of Fine Arts. 40 U.S.C. § 121; 5 D.C. Code 1961, §§ 410, 411. Stanley Co. of America v. Tobriner,

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298 F.2d 318, 1961 U.S. App. LEXIS 2904 (C.A.D.C. 1961).

The function of the Fine Arts Commission under statute requiring its approval for modification of buildings within certain areas of nation's capital is confined essentially to recommendations concerning applications for permits for the "erection or alteration of any building" within the prescribed area so far as the plans therefor relate to "height and appearance, color, and texture of the materials of external construction. ..." 40 U.S.C. § 121; D.C. Code §§ 5-410, 5-802. *Commissioner of District of Columbia v. Benenson*, 329 A.2d 437, 1974 D.C. App. LEXIS 323 (1974).

Taking of private property.

For purpose of property owner's claim that District of Columbia engaged in taking without just compensation, by denying building permits for properties that were subdivided from lawn of owner's apartment building property, relevant parcel consisted of property as a whole, including apartment building lot and all of subdivided lots, not individual subdivided lots, as lots were spatially and functionally contiguous. U.S. Const.Amend. 5. *District Intown Props. Ltd. Pshp. v. District of Columbia*, 198 F.3d 874, 1999 U.S. App. LEXIS 32701 (C.A.D.C. 1999), writ of certiorari denied by 531 U.S. 812, 121 S. Ct. 34, 148 L. Ed. 2d 14, 2000 U.S. LEXIS 4890, 69 U.S.L.W. 3224 (2000).

Denial of owner's request for permits to build on parcels that were subdivided from lawn of apartment building property did not render property valueless, as required to establish total taking, even if subdivided parcels were considered separately from apartment building parcel, absent evidence that lawns' economic value was totally destroyed or evidence of parcels' fair market value after permits were denied. U.S. Const.Amend. 5. *District Intown Props. Ltd. Pshp. v. District of Columbia*, 198 F.3d 874, 1999 U.S. App. LEXIS 32701 (C.A.D.C. 1999), writ of certiorari denied by 531

U.S. 812, 121 S. Ct. 34, 148 L. Ed. 2d 14, 2000 U.S. LEXIS 4890, 69 U.S.L.W. 3224 (2000).

Denial of owner's request for permits to build on parcels that were subdivided from lawn of apartment building property did not amount to regulatory taking that would require just compensation, where there was no evidence that parcel as a whole was thereby unprofitable to maintain, and owner could not have had any reasonable investment-backed expectations of development given background regulatory structure at time of subdivision. U.S. Const.Amend. 5. *District Intown Props. Ltd. Pshp. v. District of Columbia*, 198 F.3d 874, 1999 U.S. App. LEXIS 32701 (C.A.D.C. 1999), writ of certiorari denied by 531 U.S. 812, 121 S. Ct. 34, 148 L. Ed. 2d 14, 2000 U.S. LEXIS 4890, 69 U.S.L.W. 3224 (2000).

Denial of permits for construction of townhouses on lots which had been subdivided from lawn of apartment building property which was designated as an historic landmark did not constitute a partial, compensable, taking; denial of permits was aimed at promoting congressionally recognized public interest, denial did not interfere unnecessarily with investment-backed expectations as property had been maintained by same owners as one unified lot for roughly 25 years and there was no claim that original purchase was in any way motivated by expectations concerning development of the lawn, owners were on notice that their property was subject to designation as an historic landmark, owners did not argue that the present arrangement did not yield a reasonable return, and there was synergistic value created by the building and the lawn. U.S. Const.Amend. 5; D.C. Code 1981, §§ 5-410, 5-1002, 5-1007, 5-4101. *District Intown Props. Ltd. Pshp. v. District of Columbia*, 23 F.Supp.2d 30, 1998 U.S. Dist. LEXIS 15427 (1998), affirmed by 198 F.3d 874, 339 U.S. App. D.C. 127, 1999 U.S. App. LEXIS 32701, 49 Env't Rep. Cas. (BNA) 1838 (1999).

§ 6-611.02. Plats of restricted area.

The Council of the District of Columbia, in consultation with the National Capital Planning Commission, shall prepare plats defining the areas within which application for building permits shall be submitted to the Commission of Fine Arts for its recommendations.

(May 16, 1930, 46 Stat. 367, ch. 291, § 2.)

Cross references. — Airspace leases, conditions for execution of lease, see § 10-1121.04.

Rental and utilization of public space, conditional authorization to construct structures, federal and district governments, see § 10-1121.11.

Rental and utilization of public space, public space on or above ground, see § 10-1102.01.

Prior Codifications. — 1981 Ed., § 5-411. 1973 Ed., § 5-411.

Transfer of Functions. — "National Capital Planning Commission" was substituted for

"National Capital Park and Planning Commission" in view of the Act of June 6, 1924, ch. 270, § 9, as added by the Act of July 19, 1952, 66 Stat. 790, ch. 949, § 1, which transferred the functions, powers, and duties of the National Capital Park and Planning Commission to the National Capital Planning Commission.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(121) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

Definition of area.

Northeast corner of intersection of Thirteenth and E Streets, Northwest, in District of Columbia, which was clearly in line of a well-nigh unobstructed view from Pennsylvania Avenue as well as in close proximity thereto, was within area of authority of Commission of Fine Arts. 40 U.S.C. § 121; 5 D.C. Code 1961, §§ 410, 411. *Stanley Co. of America v. Tobriner*, 298 F.2d 318, 1961 U.S. App. LEXIS 2904 (C.A.D.C. 1961).

Interpretation of the phrase "to front" on Pennsylvania Avenue for a period over 30 years so as to include a certain corner within authority of Commission of Fine Arts would not be disturbed by courts unless the act, reasonably construed, so required. 40 U.S.C. § 121; 5 D.C. Code, §§ 410, 411. *Stanley Co. of America v. Tobriner*, 298 F.2d 318, 1961 U.S. App. LEXIS 2904 (C.A.D.C. 1961).

Purpose of act conferring authority upon Commission of Fine Arts to pass upon a permit

where erection or alteration of any building, any portion of which is to front upon a certain portion of Pennsylvania Avenue, is to enhance and preserve beauty and aesthetic value of specified parts of Nation's Capital but Commission's authority does not extend to all buildings that can be seen from the specified portion of Pennsylvania Avenue. 40 U.S.C. § 121; 5 D.C. Code, §§ 410, 411. *Stanley Co. of America v. Tobriner*, 298 F.2d 318, 1961 U.S. App. LEXIS 2904 (C.A.D.C. 1961).

Under statute giving Commission of Fine Arts duty of approving alteration of buildings adjacent to public buildings of major importance and when part of property fronts or abuts on portion of Pennsylvania Avenue extending from Capitol to White House, property located on Thirteenth Street Northwest was "adjacent" and did "front" on Pennsylvania Avenue within contemplation of statute. 40 U.S.C. §§ 104, 121; D.C. Code 1951, § 5-411. *Stanley Co. of America v. McLaughlin*, 195 F.Supp. 519, 1961 U.S. Dist. LEXIS 5405 (D.D.C.1961).

Subchapter III. Zoning and Zoning Commission.

PART A.

ZONING COMMISSION ESTABLISHED.

§ 6-621.01. Zoning Commission — Created; composition; appointment; term of office; compensation; Chairman; powers generally.

(a) To protect the public health, secure the public safety, and to protect property in the District of Columbia there is created a Zoning Commission for the District of Columbia, which shall consist of the Architect of the Capitol, the

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Director of the National Park Service, and 3 members appointed by the Mayor, by and with the advice and consent of the Council. Each member appointed by the Mayor shall serve for a term of 4 years, except of the members first appointed under this section:

(1) One member shall serve for a term of 2 years, as determined by the Mayor;

(2) One member shall serve for a term of 3 years, as determined by the Mayor; and

(3) One member shall serve for a term of 4 years, as determined by the Mayor.

(b) Members of the Zoning Commission appointed by the Mayor shall be entitled to receive compensation as determined by the Mayor, with the approval of a majority of the Council. The remaining members shall serve without additional compensation.

(c) Members of the Zoning Commission appointed by the Mayor may be reappointed. Each member shall serve until his successor has been appointed and qualifies.

(d) The Chairman of the Zoning Commission shall be selected by the members.

(e) The Zoning Commission shall exercise all the powers and perform all the duties with respect to zoning in the District as provided by law.

(Mar. 1, 1920, 41 Stat. 500, ch. 92, § 1; Mar. 3, 1921, 41 Stat. 1291, ch. 124; Feb. 26, 1925, 43 Stat. 983, ch. 339; Exec. Order No. 6166, June 10, 1933; Mar. 2, 1934, 48 Stat. 389, ch. 38, § 1; Dec. 24, 1973, 87 Stat. 810, Pub. L. 93-198, title IV, § 492(a).)

Cross references. — “Agency” defined, see § 1-315.02.

Building regulations, powers and duties of Council and Mayor, see § 1-303.04.

Election campaigns, candidates, disclosure of financial interests, see § 1-1106.02.

Mayoral nomination of agency heads, review and approval of Council, Zoning Commission, see § 1-523.01.

Section references. — This section is referred to in §§ 6-641.01, 6-641.03, 6-641.06a, 6-641.13, and 6-641.14.

Prior Codifications. — 1981 Ed., § 5-412.

1973 Ed., § 5-412.

Transfer of Functions. — All functions of all officers of the Department of the Interior and all functions of all agencies and employees of the Department, including the Director of the National Park Service, were transferred to the Secretary of the Interior, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by Reorganization Plan No. 3 of 1950, 64 Stat. 1262, §§ 1, 2, 15 F.R. 3174.

CASE NOTES

ANALYSIS

Board of zoning adjustment.

Change in classification generally.

Duties generally.

Estoppel and vested rights.

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Board of zoning adjustment.

Under zoning regulation providing for further processing of planned unit development after it had been approved by Zoning Commission, consideration by Zoning Board of Adjust-

ment was limited to matters mentioned in such regulation and Board could not go back and reconsider merits of case as ruled upon by Zoning Commission, nor could Board modify plans except in certain limited ways. Act June 20, 1938, 52 Stat. 797. *Dupont Circle Citizens Assn. v. District of Columbia Board of Zoning Adjustment*, 364 A.2d 610, 1976 D.C. App. LEXIS 372 (1976).

If member of zoning commission feels that board of zoning adjustment is usurping the policy-making function of the commission such member has every right to communicate his apprehension to his fellow commission members, and, by dint of statutory scheme which has placed a commission member or designee on the board, to make his views known to the board as well, and expressions of such sort are clearly foreseeable under the statutory plan. D.C. Code §§ 5-412, 5-420. *Sheridan-Kalorama Neighborhood Council v. District of Columbia Bd. of Zoning Adjustment*, 341 A.2d 312, 1975 D.C. App. LEXIS 418 (1975).

Person designated by zoning commission to represent commission on board of zoning adjustment is authorized to express zoning commission's concerns and to cast his vote with full knowledge of attitudes and policy positions of commission's members, but he is bound to cast his vote with the board based exclusively upon the record of proceedings before the board. D.C. Code §§ 5-412, 5-420. *Sheridan-Kalorama Neighborhood Council v. District of Columbia Bd. of Zoning Adjustment*, 341 A.2d 312, 1975 D.C. App. LEXIS 418 (1975).

There is no essential conflict between serving as zoning commission member of board of zoning adjustment, as permitted by statute, and casting a vote based exclusively upon the record before the board. D.C. Code §§ 1-1501 et seq., 5-412, 5-420. *Sheridan-Kalorama Neighborhood Council v. District of Columbia Bd. of Zoning Adjustment*, 341 A.2d 312, 1975 D.C. App. LEXIS 418 (1975).

Existence of exceptional relationship between zoning commission and board of zoning adjustment, as set forth in statute which expressly provided that one board member shall be a member of the commission or member of the staff thereof which the commission designates, suggests that commission member of the board should be circumspect in manner in which he expresses to other board member the institutional interest the commission has in seeing that the board does not trespass upon policy-making area reserved to commission. *Sheridan-Kalorama Neighborhood Council v. District of Columbia Bd. of Zoning Adjustment*, 341 A.2d 312, 1975 D.C. App. LEXIS 418 (1975).

Relationship between zoning commission and board of zoning adjustment is different from that existing between trial and appellate

courts, and from that which typically obtains between administrative law judges and bodies authorized to review their rulings; various tiers of customary review structure are independent of one another, but the board is not independent of the commission since statute creating board expressly provides that one board member shall be a member of the commission or a member of the staff thereof which the commission designates, and that zoning commission member of the board serves, in effect, at pleasure of the commission. D.C. Code §§ 5-412, 5-420. *Sheridan-Kalorama Neighborhood Council v. District of Columbia Bd. of Zoning Adjustment*, 341 A.2d 312, 1975 D.C. App. LEXIS 418 (1975).

While channel for communication between zoning commission and board of zoning adjustment may become a conduit for pressures external to the zoning commission, which abuse might invalidate a board decision, such communications, if they occur should be made a part of the public record so that interested parties may comment. *Sheridan-Kalorama Neighborhood Council v. District of Columbia Bd. of Zoning Adjustment*, 341 A.2d 312, 1975 D.C. App. LEXIS 418 (1975).

Change in classification generally.

Where property situated across a street from that of plaintiffs was a vacant triangle of some two and one half acres bounded by busy streets on which a residential development could not logically be expected and it appeared that location and characteristics of the two and one half acre segment were such that its reclassification from residential to commercial would expose neighboring residential areas to a minimum of commercial encroachment, and where plaintiffs' property was not similarly situated, differentiation by Zoning Commission of District of Columbia in refusing to change classification of plaintiff's property from residential to commercial was not discriminatory so as to render Commission's action arbitrary per se. D.C. Code 1940, § 5-412 et seq. *Lewis v. District of Columbia*, 190 F.2d 25, 1951 U.S. App. LEXIS 2373 (C.A.D.C. 1951).

Zoning Commission of District of Columbia did not exceed its authority when it took into consideration fact that many properties in commercial areas neighboring plaintiffs' premises were not yet used for business purposes, in refusing to change classification of plaintiffs' property from residential to commercial. D.C. Code 1940, § 5-412 et seq. *Lewis v. District of Columbia*, 190 F.2d 25, 1951 U.S. App. LEXIS 2373 (C.A.D.C. 1951).

Where determination of Zoning Commission of District of Columbia that classification of plaintiffs' property should not be changed from residential to commercial was made in year 1947, if after reasonable time elapsed a new

application was made to Zoning Commission based on a showing of intervening occurrences and changed conditions, Commission would not be entitled to regard its previous action and the affirmance of its action by the court as conclusive against the plaintiffs. D.C. Code 1940, § 5-412 et seq. *Lewis v. District of Columbia*, 190 F.2d 25, 1951 U.S. App. LEXIS 2373 (C.A.D.C. 1951).

Duties generally.

District of Columbia Zoning Commission and the National Capital Planning Commission are not required to prepare an environmental impact statement in connection with their considerations of application for redevelopment of apartment complex either under provision of District Zoning Regulations governing planned unit developments or provisions governing amendments of zoning maps and zoning regulations. National Environmental Policy Act of 1969, §§ 1 et seq., 101, 102, 42 U.S.C. §§ 4321 et seq., 4331, 4332; District of Columbia Self-Government and Governmental Reorganization Act, §§ 101 et seq., 102(a), 203, 423, 492, 87 Stat. 774; D.C. Code §§ 5-412 et seq., 5-417. *McLean Gardens Residents, Ass'n v. National Capital Planning Com.*, 390 F. Supp. 165, 1974 U.S. Dist. LEXIS 8239 (1974).

When the Zoning Commission evaluates a proposed campus plan, it must evaluate whether the proposed use as a college or university, as a whole, is likely to become objectionable to neighboring property because of noise, traffic, number of students and other conditions. *Spring Valley - Wesley Heights Citizens Ass'n v. D.C. Zoning Comm'n*, 856 A.2d 1174, 2004 D.C. App. LEXIS 436 (2004).

Zoning Commission is exclusive agency vested with responsibility for assuring that zoning regulations are not inconsistent with comprehensive plan. *Tenley & Cleveland Park Emergency Committee v. District of Columbia Bd. of Zoning Adjustment*, 550 A.2d 331, 1988 D.C. App. LEXIS 206 (1988), writ of certiorari denied by 489 U.S. 1082, 109 S. Ct. 1539, 103 L. Ed. 2d 843, 1989 U.S. LEXIS 1460, 57 U.S.L.W. 3620 (1989).

Estoppel and vested rights.

Benefits assessed against lands surrounding land condemned for and dedicated as public park were obvious advantages thereto because of their location, reflected in their market value, though there was no guaranty of park's continuance for any particular time. Act Sept. 27, 1890, 26 Stat. 492, 493, §§ 3, 6, and § 1, 40 U.S.C. § 83. *Reichelderfer v. Quinn*, 53 S.Ct. 177, 1932 U.S. LEXIS 776 (U.S. Dist. Col. 1932).

Landowners derived no rights against government merely from dedication of nearby land as park; such dedication being declaration of public policy, which same or succeeding Con-

gress might change by devoting land to other uses. Act Sept. 27, 1890, § 3, 26 Stat. 492, and § 1 (40 U.S.C. § 83). *Reichelderfer v. Quinn*, 53 S.Ct. 177, 1932 U.S. LEXIS 776 (U.S. Dist. Col. 1932).

Owner of land abutting on lands acquired by governmental body in fee and dedicated by statute as park cannot complain of subsequent legislative change of use thereof. *Reichelderfer v. Quinn*, 53 S.Ct. 177, 1932 U.S. LEXIS 776 (U.S. Dist. Col. 1932).

Dedication of park by statute did not imply promise to neighboring landowners, assessed for benefits, that park would be continued in perpetuity. Act Sept. 27, 1890, 26 Stat. 492, 493, §§ 3, 6, and § 1 (40 U.S.C. § 83). *Reichelderfer v. Quinn*, 53 S.Ct. 177, 1932 U.S. LEXIS 776 (U.S. Dist. Col. 1932).

That district granted certificate of occupancy of land in commercial zone and license for public golf course, in reliance on which corporation erected valuable improvements, held not to estop district from prosecuting corporation for violation of zoning ordinance in using, as part of golf course, adjoining property zoned for residential purposes. D.C. Code 1929, T. 25, § 521 et seq. *Golf, Inc. v. District of Columbia*, 67 F.2d 575, 1933 U.S. App. LEXIS 4550 (1933).

Exhaustion of administrative remedies.

Where owners and operators of substantial rental property in close proximity to proposed community correctional center brought action for a preliminary and permanent injunction barring District of Columbia officials from using the premises as such a center on ground that the center was not a rooming house under District of Columbia zoning regulations, it was improper to determine merits and to issue a permanent injunction without requiring recourse under doctrine of primary jurisdiction to administrative remedies available to parties that would have provided guidance of administrative expertise which the courts should require. Zoning Act of June 20, 1938, 52 Stat. 797; D.C. Code §§ 5-412, 5-413, 5-420. *Brawner Bldg., Inc. v. Shehyn*, 442 F.2d 847, 1971 U.S. App. LEXIS 11721 (C.A.D.C. 1971).

Failure of challengers to issuance of building permit to pursue any action before Zoning Commission, which was exclusive agency vested with responsibility for assuring that zoning regulations were not inconsistent with comprehensive plan, amounted to failure to exhaust administrative remedies. *Tenley & Cleveland Park Emergency Committee v. District of Columbia Bd. of Zoning Adjustment*, 550 A.2d 331, 1988 D.C. App. LEXIS 206 (1988), writ of certiorari denied by 489 U.S. 1082, 109 S. Ct. 1539, 103 L. Ed. 2d 843, 1989 U.S. LEXIS 1460, 57 U.S.L.W. 3620 (1989).

Factors for determination.

Zoning Commissioners of District of Columbia are entitled to consider entire situation in a

particular locality and need not close their eyes to such factors as adequacy and good condition of existing buildings for uses to which they are presently being put, need of community for those uses, style and attractiveness of existing buildings and the like, since, all of that is relevant to preservation of values of surrounding property. D.C. Code 1940, § 5-412 et seq. *Lewis v. District of Columbia*, 190 F.2d 25, 1951 U.S. App. LEXIS 2373 (C.A.D.C. 1951).

Zoning Commission of District of Columbia was entitled to take into consideration in refusing plaintiffs' request that their premises be changed in classification from residential to commercial, fact that existing residential structures on plaintiff's premises included at least one substantial apartment house, that they were well occupied, and that structures formed a useful part of housing accommodations of community. D.C. Code 1940, § 5-412 et seq. *Lewis v. District of Columbia*, 190 F.2d 25, 1951 U.S. App. LEXIS 2373 (C.A.D.C. 1951).

Refusal of Zoning Commission of District of Columbia to change classification of plaintiff's property from residential to commercial based, in part, on determination of eligibility of plaintiffs' properties for limited commercial use and on fact that although classification of plaintiffs' property was residential certain of them on proper permit could lawfully be used for and by, educational or philanthropic institutions, trade associations, and professional persons, was not invalid as such uses are proper matters for consideration. D.C. Code 1940, § 5-412 et seq. *Lewis v. District of Columbia*, 190 F.2d 25, 1951 U.S. App. LEXIS 2373 (C.A.D.C. 1951).

Absent a material procedural impropriety or error of law, the Zoning Commission's decision regarding a proposed university campus plan stands so long as it rationally flows from findings of fact supported by substantial evidence in the record as a whole. *Spring Valley - Wesley Heights Citizens Ass'n v. D.C. Zoning Comm'n*, 856 A.2d 1174, 2004 D.C. App. LEXIS 436 (2004).

Hearings procedure.

Landowners objecting to rezoning of adjoining property were not afforded their statutory right to a reasonable opportunity to be heard where only two of the five members of the zoning commission attended the public hearing to hear protests against the rezoning, and concurrence of a majority of the whole commission was required by statute to change zoning. D.C. Code §§ 5-412, 5-415, 5-416. *Allen v. Zoning Com. of District of Columbia*, 449 F.2d 1100, 1971 U.S. App. LEXIS 9056 (C.A.D.C. 1971).

Zoning commission of the District of Columbia was not required to state its reasons nor make findings of fact in denying application for change in zoning classification. D.C. Code § 5-412. *Shenk v. Zoning Com. of District of Colum-*

bia, 440 F.2d 295, 1971 U.S. App. LEXIS 11299 (C.A.D.C. 1971).

In general.

Zoning regulations of District of Columbia are not government contracts, and may be modified by Congress, as by statute authorizing construction of fire house in park near area set apart for residential properties. D.C. Code 1929, T. 25, §§ 521-530; Act May 21, 1928, § 1, 45 Stat. 667. *Reichelderfer v. Quinn*, 53 S.Ct. 177, 1932 U.S. LEXIS 776 (U.S. Dist. Col. 1932).

District of Columbia Council's interpretation of its responsibilities under Home Rule Act is entitled to great deference. D.C. Code 1981, § 1-201 et seq. *Tenley & Cleveland Park Emergency Committee v. District of Columbia Bd. of Zoning Adjustment*, 550 A.2d 331, 1988 D.C. App. LEXIS 206 (1988), writ of certiorari denied by 489 U.S. 1082, 109 S. Ct. 1539, 103 L. Ed. 2d 843, 1989 U.S. LEXIS 1460, 57 U.S.L.W. 3620 (1989).

Neither District of Columbia Self Government Act nor District of Columbia Comprehensive Plan Act of 1984 imposed moratorium on private real estate development permitted as a matter of right under applicable zoning regulations, even if regulations may have been inconsistent with District's comprehensive plan. D.C. Code 1981, §§ 1-201 et seq., 1-245 et seq. *Tenley & Cleveland Park Emergency Committee v. District of Columbia Bd. of Zoning Adjustment*, 550 A.2d 331, 1988 D.C. App. LEXIS 206 (1988), writ of certiorari denied by 489 U.S. 1082, 109 S. Ct. 1539, 103 L. Ed. 2d 843, 1989 U.S. LEXIS 1460, 57 U.S.L.W. 3620 (1989).

The power to zone is legislative and the Zoning Commission, acting under delegated authority, is a quasi-legislative body. D.C. Code §§ 5-413, 5-415. *Citizens Assn. of Georgetown, Inc. v. Washington*, 291 A.2d 699, 1972 D.C. App. LEXIS 387 (1972).

Judicial review generally.

Zoning commission's reasonable exercise of power cannot be controlled by courts. *Zoning Act March 1, 1920*, §§ 4, 5 (41 Stat. 500). *Larrabee v. Bell*, 10 F.2d 986, 1926 U.S. App. LEXIS 2314 (1926).

Zoning Commission's failure to articulate with particularity and precision, in approval of university's campus plan, why it rejected advisory neighborhood commission-supported recommendation that students and others affiliated with university be required to have parking stickers in order to facilitate enforcement of the plan required remand. *Spring Valley - Wesley Heights Citizens Ass'n v. D.C. Zoning Comm'n*, 856 A.2d 1174, 2004 D.C. App. LEXIS 436 (2004).

The court is obliged to affirm the Zoning Commission's conclusions so long as they are rational and not arbitrary or capricious. *Spring*

Valley - Wesley Heights Citizens Ass'n v. D.C. Zoning Comm'n, 856 A.2d 1174, 2004 D.C. App. LEXIS 436 (2004).

Statutory scheme for processing zoning exceptions was adhered to, and petitioners who sought judicial review of board of zoning adjustment action which granted a special exception were afforded a fair and impartial hearing which satisfied requirements of procedural due process where, inter alia, following indication by board member who was also a member of zoning commission, that commission would review denial of application, one board member dissented and expressed apprehension that improper pressure had been brought to bear from "upstairs," commission's order of remand disavowed any intention on commission's part to influence independent decision-making process of board, and board's final order was based upon criteria made applicable by zoning regulations. D.C. Code §§ 5-412, 5-420. *Sheridan-Kalorama Neighborhood Council v. District of Columbia Bd. of Zoning Adjustment*, 341 A.2d 312, 1975 D.C. App. LEXIS 418 (1975).

Liability.

Members of zoning commission would have been immune from liability for damages, measured by difference between value which land would have had if it had been rezoned by commission and amount fixed in condemnation on basis of existing zoning, even if condemnees had not settled their claim, especially where condemnees had had alternative remedy of presenting proof of probability of rezoning during the condemnation action and had had opportunity for judicial review in form of action for injunction or declaratory judgment for the alleged arbitrary actions of zoning officials. *Sittenfeld v. Tobriner*, 459 F.2d 1137, 1971 U.S. App. LEXIS 6356 (C.A.D.C. 1971).

Powers generally.

The Zoning Commission may impose reasonable restrictions on a proposed campus plan in order to minimize the impact of the university on the neighborhood, but in doing so the Commission also should have due regard for the university's needs and prerogatives. *Spring Valley - Wesley Heights Citizens Ass'n v. D.C. Zoning Comm'n*, 856 A.2d 1174, 2004 D.C. App. LEXIS 436 (2004).

Board of Zoning Appeals and Zoning Administrator have no power to implement comprehensive plan. D.C. Code 1981, § 5-424(e). *Tenley & Cleveland Park Emergency Committee v. District of Columbia Bd. of Zoning Adjustment*, 550 A.2d 331, 1988 D.C. App. LEXIS 206 (1988), writ of certiorari denied by 489 U.S. 1082, 109 S. Ct. 1539, 103 L. Ed. 2d 843, 1989 U.S. LEXIS 1460, 57 U.S.L.W. 3620 (1989).

Zoning Administrator is limited to enforcing and certifying occupancy regulations. *Tenley &*

Cleveland Park Emergency Committee v. District of Columbia Bd. of Zoning Adjustment, 550 A.2d 331, 1988 D.C. App. LEXIS 206 (1988), writ of certiorari denied by 489 U.S. 1082, 109 S. Ct. 1539, 103 L. Ed. 2d 843, 1989 U.S. LEXIS 1460, 57 U.S.L.W. 3620 (1989).

Presumptions and burden of proof.

Court cannot assume that zoning regulations prohibiting golf driving course in residential district were arbitrary and unreasonable, but presumption is to contrary, in absence of evidence. D.C. Code 1929, T. 25, § 521 et seq.; Const.U.S. Amend. 14. *Golf, Inc. v. District of Columbia*, 67 F.2d 575, 1933 U.S. App. LEXIS 4550 (1933).

There is a presumption that the regulations and acts of the zoning commission of the District of Columbia are reasonable. Act March 1, 1920, § 1 et seq., 41 Stat. 500; D.C. Code 1951, § 5-412 et seq. *Hagans v. District of Columbia*, 97 A.2d 922, 1953 D.C. App. LEXIS 151 (Cr.App. 1953).

Purpose.

Purpose of zoning is to create districts, large or small, and not to zone or rezone specific property. D.C. Code 1961, §§ 5-412, 5-413, 5-420. *Capital Properties, Inc. v. Zoning Com. of District of Columbia*, 229 F. Supp. 255, 1964 U.S. Dist. LEXIS 7042 (D.D.C.1964).

Scope and standard of judicial review.

In performing its function of judicial review, the district court of the District of Columbia considers the zoning board's findings and determinations and will not substitute its judgment so long as there is a rational basis for the board's opinion. *Zoning Act of June 20, 1938*, 52 Stat. 797; D.C. Code §§ 5-412, 5-413, 5-420. *Brawner Bldg., Inc. v. Shehyn*, 442 F.2d 847, 1971 U.S. App. LEXIS 11721 (C.A.D.C. 1971).

A suit to declare a zoning order void is not an appeal on the merits of the issues presented to the Zoning Commission of the District of Columbia at its hearing. D.C. Code 1940, § 5-412 et seq. *Lewis v. District of Columbia*, 190 F.2d 25, 1951 U.S. App. LEXIS 2373 (C.A.D.C. 1951).

In reviewing exercise of discretion given to Zoning Commission for District of Columbia for establishment of a comprehensive zoning plan, it is not function of the court to substitute its judgment for that of the Commission even for reasons which appear most persuasive. D.C. Code 1940, § 5-412 et seq. *Lewis v. District of Columbia*, 190 F.2d 25, 1951 U.S. App. LEXIS 2373 (C.A.D.C. 1951).

The action of zoning authorities, as of other administrative offices, is not to be declared unconstitutional unless court is convinced that it is clearly arbitrary and unreasonable, having no substantial relation to general welfare, and if question is fairly debatable, zoning stands.

D.C. Code 1940, § 5-412 et seq. *Lewis v. District of Columbia*, 190 F.2d 25, 1951 U.S. App. LEXIS 2373 (C.A.D.C. 1951).

Courts can intervene respecting orders of zoning commission only if there is arbitrary action on part of commission. *Garrity v. District of Columbia*, 86 F.2d 207, 1936 U.S. App. LEXIS 3696 (1936).

Scope of judicial review of actions of zoning commission is very narrow, and court may not set aside action of commission merely because court might have decided other way had court been member of commission. D.C. Code 1961, §§ 5-412, 5-413, 5-420. *Capital Properties, Inc. v. Zoning Com. of District of Columbia*, 229 F. Supp. 255, 1964 U.S. Dist. LEXIS 7042 (D.D.C.1964).

Whether mistakes were made in locating boundaries of sub-class of commercial district and whether, on change of character of neighborhood, the south side of a street should have been transferred from C-2 to C-3-B classification were matters of discretion for zoning commission, where questions of degree were involved and determinations of commission were not arbitrary. D.C. Code 1961, §§ 5-412, 5-413, 5-420. *Capital Properties, Inc. v. Zoning Com. of District of Columbia*, 229 F. Supp. 255, 1964 U.S. Dist. LEXIS 7042 (D.D.C.1964).

Generally, correctness or incorrectness of decision of Board of Zoning Adjustment of District of Columbia is not one for judicial review if there is substantial evidence to support it and parties have been accorded due process of law. D.C. Code 1961, §§ 1-216, 1-218, 5-412, 5-413, 5-414, 5-420. *Jarrott v. Scrivener*, 225 F. Supp. 827, 1964 U.S. Dist. LEXIS 7576 (D.D.C.1964).

Review of a Zoning Commission order approving a campus plan is limited to determining whether the decision is arbitrary, capricious, or otherwise not in accordance with law. *Spring Valley - Wesley Heights Citizens Ass'n v. D.C. Zoning Comm'n*, 856 A.2d 1174, 2004 D.C. App. LEXIS 436 (2004).

District of Columbia Council's interpretation of its responsibilities under Home Rule Act is entitled to great deference. D.C. Code 1981, § 1-201 et seq. *Tenley & Cleveland Park Emergency Committee v. District of Columbia Bd. of Zoning Adjustment*, 550 A.2d 331, 1988 D.C. App. LEXIS 206 (1988), writ of certiorari denied by 489 U.S. 1082, 109 S. Ct. 1539, 103 L. Ed. 2d 843, 1989 U.S. LEXIS 1460, 57 U.S.L.W. 3620 (1989).

Validity.

Zoning Act held not deprivation of private property, in violation of Constitution (Zoning Act March 1, 1920 [41 Stat. 500]; Const. Amend. 5). *Larrabee v. Bell*, 10 F.2d 986, 1926 U.S. App. LEXIS 2314 (1926).

Validity of regulations.

Conflicting evidence as to whether continued inclusion of plaintiff's property in restricted

area district bore any reasonable relation to protection of public health, safety, and protection of property supported finding that action of District of Columbia zoning commission was not arbitrary in denying petition for rezoning. D.C. Code 1929, T. 25, § 521 et seq. *Garrity v. District of Columbia*, 86 F.2d 207, 1936 U.S. App. LEXIS 3696 (1936).

Zoning regulations held not discriminatory because permitting use of lands in residential districts for public recreational purposes while denying to private individuals similar use, such as for golf course. D.C. Code 1929, T. 25, § 521 et seq.; U.S. Const. Amend. 14. *Golf, Inc. v. District of Columbia*, 67 F.2d 575, 1933 U.S. App. LEXIS 4550 (1933).

Validity of proceedings to change zoning regulations held not affected by motive of commission. *Zoning Act March 1, 1920*, §§ 4, 5, 41 Stat. 500. *Larrabee v. Bell*, 10 F.2d 986, 1926 U.S. App. LEXIS 2314 (1926).

Zoning Commission's decision to eliminate directional restriction on loudspeakers when approving university's new campus plan was rational and not arbitrary of capricious; Commission required university to ensure that speakers would not have an objectionable impact on neighborhood, but left particulars of enforcement to university. *Spring Valley - Wesley Heights Citizens Ass'n v. D.C. Zoning Comm'n*, 856 A.2d 1174, 2004 D.C. App. LEXIS 436 (2004).

Zoning Commission did not act arbitrarily and capriciously in approving off-campus university parking plan without specifying the means by which it would be enforced, such as by parking stickers; university remained subject to continuing oversight by Zoning Commission and faced prospect of serious consequences if it failed to fulfill its obligations. *Spring Valley - Wesley Heights Citizens Ass'n v. D.C. Zoning Comm'n*, 856 A.2d 1174, 2004 D.C. App. LEXIS 436 (2004).

Zoning Commission did not act arbitrarily, capriciously, or contrary to law when it approved university's proposed student cap of 10,600, although number was higher than base count of previous plan; prior plan had ceiling of 11,233 students and had established base count which university was allowed to exceed by up to eight percent, and new plan lowered not-to-be-exceeded enrollment figure by 633 students. *Spring Valley - Wesley Heights Citizens Ass'n v. D.C. Zoning Comm'n*, 856 A.2d 1174, 2004 D.C. App. LEXIS 436 (2004).

The District of Columbia Zoning Commission may not adjudicate legal rights, duties or privileges of specific parties under pretense of legislative action. D.C. Code §§ 5-413 to 5-415. *Dupont Circle Citizen's Asso. v. District of Columbia Zoning Com.*, 343 A.2d 296, 1975 D.C. App. LEXIS 433 (1975).

§ 6-623.01 HOUSING & BUILDING RESTRICTIONS & REGULATIONS

Even if refusal of zoning commissioners of District of Columbia to issue license to conduct rooming house to defendant was wrongful, defendant had no right to continue business with-

out such license. Act March 1, 1920, § 2, 41 Stat. 500; D.C. Code 1951, §§ 5-412 et seq., 5-419. *Hagans v. District of Columbia*, 97 A.2d 922, 1953 D.C. App. LEXIS 151 (Cr.App. 1953).

PART B.

OFFICE OF ZONING.

§ 6-623.01. Office of Zoning; established.

There is established as an independent agency of the District of Columbia ("District") government an Office of Zoning to provide professional, technical, or administrative staff assistance to the Zoning Commission for the District ("Zoning Commission") and to the Board of Zoning Adjustment in the performance of their functions and any other duties provided by law.

(Sept. 20, 1990, D.C. Law 8-163, § 2, 37 DCR 4676.)

Section references. — This section is referred to in § 6-623.03.

Prior Codifications. — 1981 Ed., § 5-412.1.

Emergency legislation. — For temporary (90-day) provisions regarding the source of funding, see § 305 of the Service Improvement and Fiscal Year 2000 Budget Support Emergency Act of 1999 (D.C. Act 13-110, July 28, 1999, 46 DCR 6320).

For temporary (90 day) Office of Zoning additional space need provisions, see § 1202 of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) Office of Zoning additional space need provisions, see § 1202 of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 8-163. — Law 8-163, the "Office of Zoning Independence Act of 1990," was introduced in Council and assigned Bill No. 8-118, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 29, 1990, and June 12, 1990, respectively. Approved without the signature of the Mayor on June 29, 1990, it was assigned Act No. 8-227 and transmitted to both Houses of Congress for its review.

Legislative history of Law 13-38. — Law 13-38, the "Service Improvement and Fiscal

Year 2000 Budget Support Act of 1999," was introduced in Council and assigned Bill No. 13-161, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 11, 1999, and June 22, 1999, respectively. Signed by the Mayor on July 8, 1999, it was assigned Act No. 13-111 and transmitted to both Houses of Congress for its review. D.C. Law 13-38 became effective on October 20, 1999.

Short title. — Short title of subtitle S of title I of Law 15-205: Section 1201 of D.C. Law 15-205 provided that subtitle S of title I of the act may be cited as Office of Zoning Additional Space Needs Act of 2004.

Editor's notes. — Section 1202 of D.C. Law 15-205 provided: "Not later than September 30, 2004, the Office of Property Management shall provide additional space within the District government office building located at 441 4th Street, N.W. ('One Judiciary Square') to the Office of Zoning ('OZ') to address OZ's increased space requirements. The additional space to be provided shall include the Suite 200-S and other space on the second floor of One Judiciary Square."

Section effective October 1, 1991: Section 7(b) of D.C. Law 8-163 provided that the provisions of the act shall not apply until October 1, 1991.

Section 305 of D.C. Law 13-38 provided: "The exclusive source of funding for the Office of Zoning shall be appropriated local funds."

§ 6-623.02. Office of Zoning — Director and staff; appointment.

(a) The Office of Zoning shall consist of a Director and other staff as the Zoning Commission considers necessary.

(b) The Director of the Office of Zoning shall be appointed by the District members of the Zoning Commission and shall serve as an excepted service employee in accordance with § 1-609.01. The Director shall be a District resident throughout his or her term and failure to maintain District residency shall result in a forfeiture of the position.

(c) Notwithstanding the provisions of Unit A of Chapter 14 of Title 2, each qualified District resident applicant shall receive an additional 10-point preference over a qualified non-District resident applicant for all positions within the Office of Zoning unless the applicant declines the preference. This 10-point preference shall be in addition to, and not instead of, qualifications established for the position. All persons hired after February 6, 2008, shall submit proof of residency upon employment in a manner determined by the Office of Zoning. An applicant claiming the hiring preference under this section shall agree in writing to maintain bona fide District residency for a period of 7 consecutive years from the effective date of hire and shall provide proof of such residency annually to the director of personnel for the Office of Zoning for the first 7 years of employment. Failure to maintain District residency for the consecutive 7-year period shall result in forfeiture of employment. The Office shall submit to the Mayor and Council annual reports detailing the names of all new employees and their pay schedules, titles, and place of residence.

(Sept. 20, 1990, D.C. Law 8-163, § 3, 37 DCR 4676; Feb. 6, 2008, D.C. Law 17-108, § 209, 54 DCR 10993.)

Section references. — This section is referred to in § 6-623.04.

Prior Codifications. — 1981 Ed., § 5-412.2.

Effect of amendments. — D.C. Law 17-108 rewrote the section which had read as follows: “The Office of Zoning shall consist of a Director and other staff as the Zoning Commission deems necessary, subject to appropriations. The Director of the Office of Zoning shall be appointed by the District members of the Zoning Commission and shall serve as an excepted

service employee in accordance with § 1-609.01.”

Legislative history of Law 8-163. — For legislative history of D.C. Law 8-163, see Historical and Statutory Notes following § 6-623.01.

Legislative history of Law 17-108. — For Law 17-108, see notes following § 6-215.

Editor's notes. — Section effective October 1, 1991: Section 7(b) of D.C. Law 8-163 provided that the provisions of the act shall not apply until October 1, 1991.

§ 6-623.03. Office of Zoning — Transfer of functions of Zoning Secretariat of Office of Planning.

In accordance with § 1-204.04(b), the functions of the Zoning Secretariat of the Office of Planning, under the direction of the Deputy Mayor for Economic Development pursuant to the Establishment of the Office of Economic Development, effective January 3, 1983 (M.O. 83-18; 30 DCR 319), and any position, property, record, unexpended balance of appropriations, allocation, or other funds available to or to be made available relating to the functions of the Zoning Secretariat of the Office of Planning, are transferred to the Office of Zoning established by § 6-623.01.

(Sept. 20, 1990, D.C. Law 8-163, § 4, 37 DCR 4676.)

§ 6-623.04 HOUSING & BUILDING RESTRICTIONS & REGULATIONS

Prior Codifications. — 1981 Ed., § 5-412.3.

Legislative history of Law 8-163. — For legislative history of D.C. Law 8-163, see Historical and Statutory Notes following § 6-623.01.

Editor's notes. — Section effective October 1, 1991: Section 7(b) of D.C. Law 8-163 provided that the provisions of the act shall not apply until October 1, 1991.

§ 6-623.04. Office of Zoning — Recommendations, reports, review and comment by Office of Planning.

Nothing in this part shall be construed to prevent the Office of Planning from continuing to provide recommendations and reports to the Zoning Commission and the Board of Zoning Adjustment on any zoning case. The Office of Planning shall review and comment upon all zoning cases, and the Zoning Commission and the Board of Zoning Adjustment shall give great weight to the recommendation of the Office of Planning. Upon request of the Zoning Commission or the Board of Zoning Adjustment, the Office of Planning shall provide recommendations, information, or technical assistance in a timely manner.

(Sept. 20, 1990, D.C. Law 8-163, § 5, 37 DCR 4676.)

Prior Codifications. — 1981 Ed., § 5-412.4.

Legislative history of Law 8-163. — For legislative history of D.C. Law 8-163, see Historical and Statutory Notes following § 6-623.01.

Editor's notes. — Section effective October 1, 1991: Section 7(b) of D.C. Law 8-163 provided that the provisions of the act shall not apply until October 1, 1991.

Subchapter IV. Zoning Regulations; Board of Zoning Adjustment.

§ 6-641.01. Zoning Commission — Regulations; districts or zones.

To promote the health, safety, morals, convenience, order, prosperity, or general welfare of the District of Columbia and its planning and orderly development as the national capital, the Zoning Commission created by § 6-621.01, is hereby empowered, in accordance with the conditions and procedures specified in this subchapter, to regulate the location, height, bulk, number of stories and size of buildings and other structures, the percentage of lot which may be occupied, the sizes of yards, courts, and other open spaces, the density of population, and the uses of buildings, structures, and land for trade, industry, residence, recreation, public activities, or other purposes; and for the purpose of such regulation said Commission may divide the District of Columbia into districts or zones of such number, shape, and area as said Zoning Commission may determine, and within such districts may regulate the erection, construction, reconstruction, alteration, conversion, maintenance, and uses of buildings and structures and the uses of land. The said Zoning Commission shall also have power to promulgate regulations to require, with respect to buildings erected subsequent to the promulgation of such regulations, that facilities be provided and maintained either on the same

lot with any such building, or on the same lot with any such building or elsewhere, for the parking of automobiles and motor vehicles of the owners, occupants, tenants, patrons, and customers of such building, and of the business, trades, and professions conducted therein. All such regulations shall be uniform for each class or kind of building throughout each district, but the regulations in 1 district may differ from those in other districts.

(June 20, 1938, 52 Stat. 797, ch. 534, § 1; Mar. 4, 1942, 56 Stat. 122, ch. 126.)

Cross references. — Administration, National Capital Planning Commission, recommendations by concerning zoning regulations, see § 1-2006.

Administration, rules and regulations, see § 1-303.01 to § 1-303.05.

Sale of public lands, use or sale by fee simple owner, see § 10-801.

Prior Codifications. — 1981 Ed., § 5-413. 1973 Ed., § 5-413.

Temporary legislation. — Section 2 of D.C. Law 13-218 provided:

“Sec. 2. Moratorium on the issuance of permits.

“(a) No District of Columbia government agency shall issue any permit for the construction or expansion of any telecommunication structure which will reach a height above 200 feet, until the Mayor formulates a policy, in accordance with subsection (b) of this section, on the location and other parameters for construction of telecommunications structures.

“(b) The Mayor shall formulate the policy within 180 days of the effective date of this act, and shall transmit the policy to the Council for a 30-day period of review, excluding holidays, weekends and days of Council recess. If the Council does not approve or disapprove the policy by resolution within this 30-day review period, the policy shall be deemed approved. The policy shall include a consideration of:

“(1) The location of the telecommunications structure in relation to residential areas of varying density, to recreational areas, and to areas of fragile eco-systems;

“(2) The size of the lot on which the telecommunications structure is to be located;

“(3) The level of noise, electromagnetic radiation, and other types of emissions and environmental pollutants expected to be occasioned by the telecommunications structure in relation to the community;

“(4) The impact of the telecommunications structure on the property values of the owners of properties adjacent to, and surrounding the telecommunications structure;

“(5) The impact of the telecommunications structure on pedestrian and vehicle traffic;

“(6) The impact of the telecommunications structure on the character of nearby historic properties, and national and local parklands; and

“(7) Any other criteria that shall serve to ensure the protection of residential neighborhoods and commercial centers, and the health and safety of the residents and workers in the District of Columbia.”

Section 5(b) of D.C. Law 13-218 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90-day) designation of all buildings, structures, and other improvements at Ivy City Yard relating to a fixed right-of-way mass transit system, see § 3 of the Ivy City Yard Fixed Right-Of-Way Mass Transit System Designation Emergency Act of 1997 (D.C. Act 12-69, May 1, 1997, 44 DCR 3080) and see § 3 of the Ivy City Yard Fixed Right-of-Way Mass Transit System Designation Congressional Review Emergency Act of 1997 (D.C. Act 12-124, August 1, 1997, 44 DCR 4654).

For temporary (90 day) amendment of section, see § 2 of the Moratorium on the Construction of Certain Telecommunications Towers Emergency Amendment Act of 2000 (D.C. Act 13-442, October 20, 2000, 47 DCR 9000).

For temporary (90 day) amendment of section, see § 2 of the Moratorium on the Construction of Certain Telecommunications Towers Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-525, January 11, 2001, 48 DCR 631).

Legislative history of Law 13-218. — Law 13-218, the “Moratorium on the Construction of Certain Telecommunications Towers Temporary Amendment Act of 2000”, was introduced in Council and assigned Bill No. 13-822. The Bill was adopted on first and second readings on July 11, 2000, and October 3, 2000, respectively. Signed by the Mayor on October 30, 2000, it was assigned Act No. 13-470 and transmitted to both Houses of Congress for its review. D.C. Law 13-218 became effective on April 3, 2001.

Editor’s notes. — Council approval of improvements within Ivy City Yard: Section 3 of D.C. Law 12-15 and § 3 of D.C. Law 12-19 provide that the Council approves the designation of all buildings, structures, and other improvements now or hereafter built within the Ivy City Yard, or any part thereof, and used in connection with the administration, operation,

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maintenance, or repair of a railroad or a railyard, including related rail activities and uses as related to a fixed right-of-way mass transit system.

Section 5(b) of D.C. Law 12-15 provided that the act shall expire after 225 days of its having taken effect or upon the effective date of the Ivy City Yard Fixed Right-of-Way Mass Transit System Designation Act of 1997, whichever occurs first.

Zoning Review Task Force: Title VI of D.C. Law 12-86, as amended by § 58 of D.C. Law 12-264, provided for a Zoning Review Task Force as follows:

"Sec. 601. There is established a Zoning Review Task Force ("Task Force") in the District which shall consist of 11 voting members as follows:

"(1) There shall be 3 ex officio members who each may designate a representative to perform the member's responsibilities under this act as follows:

"(A) The Mayor of the District of Columbia;

"(B) The Chairman of the Council of the District of Columbia ("Council"); and.

"(C) The Chairman of the Council Committee on Consumer and Regulatory Affairs.

"(2) There shall be 8 public members, including the chairperson of the Task Force, each of whom shall be appointed by the Mayor with the advice and consent of the Council. The public members shall be nominated as follows:

"(A) One member shall be nominated from a list of persons recommended by the District of Columbia Building Industry Association, each of whom shall be a resident of the District, or a nonresident who represents a business licensed and doing business in the District;

"(B) One member shall be nominated from a list of persons recommended by the Greater Capital Area Association of Realtors, each of whom shall be a resident of the District, or a nonresident who represents a business licensed and doing business in the District;

"(C) One member shall be nominated from a list of persons recommended by the Board of Governors of the District of Columbia Bar, each of whom shall be a resident of the District, or a nonresident who has demonstrated an expertise in zoning issues in the District;

"(D) One member shall be nominated from a list of persons recommended by the District of Columbia Chamber of Commerce, each of whom shall have demonstrated an expertise in zoning issues in the District;

"(E) Two members shall be nominated by the Mayor, each of whom shall be residents of the District and each of whom shall not be an official representative of any business concerned with zoning issues in the District of Columbia; and.

"(F) Two members shall be nominated by the Council, each of whom shall be residents of the

District and each of whom shall not be an official representative of any business or profession concerned with zoning issues in the District of Columbia.

"(3) Members of the Task Force shall be appointed by the Mayor within 60 days of the effective date of the Omnibus Regulatory Reform Amendment Act of 1998. A vacancy on the Task Force shall be filled in the same manner that the original appointment was made.

"(4) The Task Force shall meet at the call of the chairperson, who shall convene the first meeting of the Task Force not later than 15 days after all appointments have been made. The Task Force shall meet not less than once each month.

"(5) A majority of the members of the Task Force shall constitute a quorum. A written transcript or audio transcript shall be kept for all meetings at which a vote is taken.

"(6) Members of the Task Force shall not be entitled to compensation for time expended in the performance of official duties, and shall be entitled only to reimbursement for actual and necessary expenses incurred in the performance of official duties approved in advance by a majority of the Task Force.

"(7) The Task Force may request from any department, agency or instrumentality of the District government, including independent agencies, any information necessary to carry out the provisions of this title. Each department, agency, instrumentality, or independent agency of the District shall cooperate with the Task Force and provide any information, in a timely manner, that the Task force reasonably requests to carry out the provisions of this title.

"(8) The Mayor shall provide administrative and technical support, office space, staff, and other resources needed by the Task Force to carry out the provisions of this title.

"(9) In addition to funds appropriated or allocated by the District government, the Task Force may solicit, receive, accept, and expend contributions or grants from private or federal sources to carry out the provisions of this title. Any Task Force solicitation, receipt, acceptance, or expenditure of contributions or grants from private sources must be approved in advance by the Mayor.

"(10) The Task Force may enter into contracts, for which sufficient appropriations or other public or private funding is available and provided, with federal or state agencies, private firms, institutions, or individuals to conduct research or surveys, prepare reports, and perform other activities necessary to the discharge of its duties.

"(11) The Task Force may establish committees, subcommittees, or advisory groups, as it deems necessary to carry out the purposes of this title.

"(12) The Task Force shall cease to exist 90 days after the report required by section 602 is submitted to the Mayor and the Council.

"Sec. 602. Duties of the Task Force; recommended legislation.

"(a) Within 270 days from the date of the first meeting of its members, the Task Force shall submit a written report to the Mayor and the Council which includes the following information:

"(1) An identification of statutes, regulations, and Charter provisions that concern land use, zoning, and the administration and adjudication of zoning regulations; and.

"(2) Recommendations, including proposed legislation, to modify, amend, repeal or otherwise change statutes and regulations concerning land use, zoning, and the administration and adjudication of zoning issues to assure rational and consistent application of such statutes and regulations.

"(b) The Chairman of the Council, upon request of the Task Force, shall introduce in the Council any proposed legislation which the Task Force determines to be necessary to further the purposes set forth in this title."

CASE NOTES

ANALYSIS

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— Findings, administrative procedure.

Zoning commission of the District of Columbia was not required to state its reasons nor make findings of fact in denying application for change in zoning classification. D.C. Code § 5-412. *Shenk v. Zoning Com. of District of Columbia*, 440 F.2d 295, 1971 U.S. App. LEXIS 11299 (C.A.D.C. 1971).

Inasmuch as judicial review of action of District of Columbia zoning commission in down-zoning area of city would be facilitated by a statement of the commission's reasons, court would direct commission to state its reasons for the down-zoning order, and to provide a statement of the environmental factors considered persuasive of the action taken. National Environmental Policy Act of 1969, § 2 et seq., 42 U.S.C. § 4321 et seq. *Ruppert v. Washington*, 366 F. Supp. 683, 1973 U.S. Dist. LEXIS 14560 (1973).

Remand was required for explanation by District of Columbia Zoning Commission of its conclusion that planned unit development was consistent with District's comprehensive plan; simple conclusory statement without explanation was insufficient where it appeared, at least facially, that development was inconsistent with plan. D.C. Code 1981, § 5-414. *Blagden Alley Ass'n v. District of Columbia Zoning Com.*, 590 A.2d 139, 1991 D.C. App. LEXIS 103 (1991).

Remand was required for explanation of how approved planned unit development was consistent with District of Columbia Zoning Commission regulations; approval of application containing only off-site amenities appeared, at least facially, to run afoul of regulations and, though Commission was free to regulate through contested case proceedings, it was required to set forth basis for its decision with such clarity as to be understandable. *Blagden Alley Ass'n v. District of Columbia Zoning Com.*, 590 A.2d 139, 1991 D.C. App. LEXIS 103 (1991).

— In general.

Proceedings before District of Columbia zoning commission are quasi-legislative in character, not adjudicative in nature, and strictures of the District of Columbia Administrative Procedure Act and full range of due process protections necessary to an adversary adjudication are not applicable. D.C. Code § 1-1501 et seq.;

National Environmental Policy Act of 1969, § 102(2)(C), 42 U.S.C. § 4332(2)(C). *Ruppert v. Washington*, 366 F. Supp. 686, 1973 U.S. Dist. LEXIS 12806 (1973), affirmed without opinion by 543 F.2d 416, 177 U.S. App. D.C. 269 (1976), affirmed without opinion by 543 F.2d 417, 177 U.S. App. D.C. 270 (1976).

Whether mistakes were made in locating boundaries of sub-class of commercial district and whether, on change of character of neighborhood, the south side of a street should have been transferred from C-2 to C-3-B classification were matters of discretion for zoning commission, where questions of degree were involved and determinations of commission were not arbitrary. D.C. Code 1961, §§ 5-412, 5-413, 5-420. *Capital Properties, Inc. v. Zoning Com. of District of Columbia*, 229 F. Supp. 255, 1964 U.S. Dist. LEXIS 7042 (D.D.C.1964).

Zoning commission which held three hearings and received over 500 pages of testimony as well as 400 pages of information submitted by agencies and interested persons with respect to planned unit development and which made 37 findings of fact and six conclusions of law more than followed the minimum rights guaranteed by the planned unit development regulations. *Dupont Circle Citizens Asso. v. District of Columbia Zoning Com.*, 426 A.2d 327, 1981 D.C. App. LEXIS 211 (1981).

Court has duty to assure that proceedings before the Zoning Commission are essentially fair, for if Commission violates its trusts by in effect conducting a sham hearing, its actions are arbitrary. D.C. Code § 5-413 et seq. *Citizens Asso. of Georgetown v. Zoning Com. of District of Columbia*, 392 A.2d 1027, 1978 D.C. App. LEXIS 328 (1978).

Restraints of District of Columbia Administrative Procedure Act and full range of due process protections necessary to an adversary adjudication were not applicable to rulemaking proceedings before the Zoning Commission. D.C. Code §§ 1-1501 et seq., 5-413 et seq. *Citizens Asso. of Georgetown v. Zoning Com. of District of Columbia*, 392 A.2d 1027, 1978 D.C. App. LEXIS 328 (1978).

Ex parte communications between Zoning Commission staff and various developers during rule-making proceeding relating to Georgetown waterfront did not violate requirements of District of Columbia Administrative Procedure Act or due process, and did not deny a fair hearing. D.C. Code §§ 1-1501 et seq., 5-413 et seq. *Citizens Asso. of Georgetown v. Zoning Com. of District of Columbia*, 392 A.2d 1027, 1978 D.C. App. LEXIS 328 (1978).

The District of Columbia Zoning Commission may not adjudicate legal rights, duties or privileges of specific parties under pretense of legislative action. D.C. Code §§ 5-413 to 5-415. *Dupont Circle Citizen's Asso. v. District of Co-*

lumbia Zoning Com., 343 A.2d 296, 1975 D.C. App. LEXIS 433 (1975).

— Modification of regulations, administrative procedure.

Property owner who had petitioned for rezoning of property located in restricted area in which erection of apartment houses was forbidden for rezoning of property to specified zoning district in which erection of apartment houses was permitted held entitled to determination as to whether continued use restriction of existing zoning was reasonable. *Hazen v. Hawley*, 86 F.2d 217, 1936 U.S. App. LEXIS 3697 (1936).

Validity of proceedings to change zoning regulations held not affected by motive of commission. *Zoning Act March 1, 1920*, §§ 4, 5, 41 Stat. 500. *Larrabee v. Bell*, 10 F.2d 986, 1926 U.S. App. LEXIS 2314 (1926).

Contacts of District of Columbia zoning commission with federal agencies did not defeat validity of down-zoning order of the commission on theory that the commission considered information ex parte. D.C. Code § 1-1501 et seq.; *National Environmental Policy Act of 1969*, § 102(2)(C), 42 U.S.C. § 4332(2)(C). *Ruppert v. Washington*, 366 F. Supp. 686, 1973 U.S. Dist. LEXIS 12806 (1973), affirmed without opinion by 543 F.2d 416, 177 U.S. App. D.C. 269 (1976), affirmed without opinion by 543 F.2d 417, 177 U.S. App. D.C. 270 (1976).

In performance of adjudicatory function by Board of Zoning Adjustment of District of Columbia, parties whose rights are involved are entitled to same fairness, impartiality and independence of judgment as are expected in court of law. D.C. Code 1961, §§ 1-216, 1-218, 5-412, 5-413, 5-414, 5-420. *Jarrott v. Scrivener*, 225 F. Supp. 827, 1964 U.S. Dist. LEXIS 7576 (D.D.C.1964).

Where applicant for planned unit development had requested rezoning in conjunction with its application and the commission informed the applicant that the appropriate zoning classification which should be requested was other than the one which was originally sought, the action of the commission was not the issuance of a height incentive grant so that there was no requirement for comparison of the planned unit development proposal facilities with those available under the general provisions of the zoning regulation. *Dupont Circle Citizens Asso. v. District of Columbia Zoning Com.*, 426 A.2d 327, 1981 D.C. App. LEXIS 211 (1981).

Zoning Commission properly proceeded by rulemaking in preparing new zoning proposals for Georgetown waterfront. D.C. Code § 5-413 et seq. *Citizens Asso. of Georgetown v. Zoning Com. of District of Columbia*, 392 A.2d 1027, 1978 D.C. App. LEXIS 328 (1978).

Where there was a quorum of the zoning commission at the public hearings, where deci-

sion to grant application for change in zoning was made unanimously by the entire five member commission, where the order itself, containing the findings of fact and conclusions of law, was later signed by three members, two of whom had been present at the hearings, and where opportunity was granted to objectors to file exceptions and present argument to majority of those who rendered the order, the provisions of the Administrative Procedure Act were sufficiently complied with. D.C. Code § 1-1501 et seq. *Palisades Citizens Assoc., Inc. v. District of Columbia Zoning Com.*, 368 A.2d 1143, 1977 D.C. App. LEXIS 413 (1977).

Findings that, since adoption of comprehensive zoning plan, there had been substantial changes along a major arterial highway which made rezoning of site for permit townhouse development appropriate, that the change would promote the early and orderly development of the property, that the rezoning would not produce dangerous or objectionable traffic conditions, that the amendment was in harmony with the comprehensive zoning plan, that the amendment would not adversely affect the character or uses of adjacent districts, and that the townhouse development would require site plan review were sufficient to support rezoning of the property. *Palisades Citizens Assoc., Inc. v. District of Columbia Zoning Com.*, 368 A.2d 1143, 1977 D.C. App. LEXIS 413 (1977).

Hearing upon property owner's proposed zoning map amendment before its denial was not constitutionally required. *W. C. & A. N. Miller Dev. Co. v. District of Columbia Zoning Com.*, 340 A.2d 420, 1975 D.C. App. LEXIS 372 (1975).

Admissibility of evidence.

In suit by property owner to require rezoning of property so as to permit erection of apartment, admission of evidence of doctor who was shown pictures of projected apartment which was planned to be erected on property, and who testified as to effect erection of such an apartment, or modern apartment, would have on public health of territory adjacent to property, held not prejudicial error. *Hazen v. Hawley*, 86 F.2d 217, 1936 U.S. App. LEXIS 3697 (1936).

In property owner's suit to require rezoning of property so as to permit erection of an apartment, admission of pencil sketches of projected apartment for property to prove that sketches were before zoning commission upon hearing of petition for rezoning held not prejudicial error. *Hazen v. Hawley*, 86 F.2d 217, 1936 U.S. App. LEXIS 3697 (1936).

Whether particular location of an apartment house would be deleterious to health is within field of expert testimony as regards zoning restrictions. *Hazen v. Hawley*, 86 F.2d 217, 1936 U.S. App. LEXIS 3697 (1936).

On an administrative hearing with respect to granting an exception to the zoning regulations to permit the erection of a gasoline station, fact that letter opposing the grant of the application from the capital planning commission was apparently based on hearsay and that neither its writer nor the member of the staff who made the investigation was present for cross-examination did not affect the admissibility of the letter, as would be case at a trial before the judicial tribunal. D.C. Code 1951, §§ 5-413, 5-420. *O'Boyle v. Coe*, 155 F.Supp. 581, 1957 U.S. Dist. LEXIS 2978 (D.D.C.1957).

Board of zoning adjustment.

Under zoning regulation providing for further processing of planned unit development after it had been approved by Zoning Commission, consideration by Zoning Board of Adjustment was limited to matters mentioned in such regulation and Board could not go back and reconsider merits of case as ruled upon by Zoning Commission, nor could Board modify plans except in certain limited ways. Act June 20, 1938, 52 Stat. 797. *Dupont Circle Citizens Asso. v. District of Columbia Board of Zoning Adjustment*, 364 A.2d 610, 1976 D.C. App. LEXIS 372 (1976).

While channel for communication between zoning commission and board of zoning adjustment may become a conduit for pressures external to the zoning commission, which abuse might invalidate a board decision, such communications, if they occur should be made a part of the public record so that interested parties may comment. *Sheridan-Kalorama Neighborhood Council v. District of Columbia Bd. of Zoning Adjustment*, 341 A.2d 312, 1975 D.C. App. LEXIS 418 (1975).

Constitutional rights.

While property rights may not be taken without due process of law, a property owner has no right to a particular zoning classification of his property. *W. C. & A. N. Miller Dev. Co. v. District of Columbia Zoning Com.*, 340 A.2d 420, 1975 D.C. App. LEXIS 372 (1975).

Districts generally.

Where a lot constituted the corner of less restricted zone, lot was separated on three sides by public park and on all four sides by a park or street or both, from all present and probable future housing, and owner's proposed apartment building would accommodate many more people than single dwellings which might be built on the lot, and enforcement of zoning commission's order restricting lot to single dwellings would greatly impair value of lot and would not increase value of adjoining property, zoning order was properly set aside. *Wolpe v. Poretzky*, 154 F.2d 330, 1946 U.S. App. LEXIS 2056 (1946).

Under statute authorizing zoning commission to divide District of Columbia into height, area, and use districts and to regulate height and area of buildings and purposes for which buildings and premises therein may be used, commission had power to create use district with apartment house restriction. D.C. Code 1929, T. 25, § 521 et seq. *Garrity v. District of Columbia*, 86 F.2d 207, 1936 U.S. App. LEXIS 3696 (1936).

Under statute authorizing zoning commission to divide District of Columbia into height, area, and use districts and to regulate height and area of buildings and purposes for which buildings and premises therein may be used, commission could create districts wherein use was restricted to residential use excluding apartment houses and area requirements respecting yard and court dimensions and percentage of lot occupancy were imposed. D.C. Code 1929, T. 25, § 521 et seq. *Garrity v. District of Columbia*, 86 F.2d 207, 1936 U.S. App. LEXIS 3696 (1936).

Under statute authorizing zoning commission to divide District of Columbia into height, area, and use districts and to regulate height and area of buildings and purposes for which buildings and premises therein may be used, commission had power to create residential restricted zoning use district. Act March 1, 1920, § 1 et seq., 41 Stat. 500; D.C. Code 1951, § 5-412 et seq. *Hagans v. District of Columbia*, 97 A.2d 922, 1953 D.C. App. LEXIS 151 (Cr.App. 1953).

Environmental impact.

District of Columbia Zoning Commission and the National Capital Planning Commission are not required to prepare an environmental impact statement in connection with their considerations of application for redevelopment of apartment complex either under provision of District Zoning Regulations governing planned unit developments or provisions governing amendments of zoning maps and zoning regulations. National Environmental Policy Act of 1969, §§ 1 et seq., 101, 102, 42 U.S.C. §§ 4321 et seq., 4331, 4332; District of Columbia Self-Government and Governmental Reorganization Act, §§ 101 et seq., 102(a), 203, 423, 492, 87 Stat. 774; D.C. Code §§ 5-412 et seq., 5-417. *McLean Gardens Residents, Asso. v. National Capital Planning Com.*, 390 F. Supp. 165, 1974 U.S. Dist. LEXIS 8239 (1974).

Although the District of Columbia Zoning Commission and National Capital Planning Commission are not required to prepare an environmental impact statement in connection with applications under the District's zoning regulations for planned unit development or for amendment of zoning maps and zoning regulations, the environmental policies delineated in the National Environmental Policy Act should

find expression in the planning and zoning process in the District; proper avenue for implementation of the purposes of the NEPA is in the planning operations of the National Capital Planning Commission, particularly in formulation of the Comprehensive Plan. National Environmental Policy Act of 1969, §§ 1 et seq., 102, 42 U.S.C. §§ 4321 et seq., 4332; District of Columbia Self-Government and Governmental Reorganization Act, § 101 et seq., 87 Stat. 774; National Capital Planning Act of 1952, § 4(a), 40 U.S.C. § 71c(a); D.C. Code § 1-1004(a). *McLean Gardens Residents, Asso. v. National Capital Planning Com.*, 390 F. Supp. 165, 1974 U.S. Dist. LEXIS 8239 (1974).

National Environmental Policy Act was not intended to reach zoning operations on the local governmental level. National Environmental Policy Act of 1969, §§ 1 et seq., 102, 42 U.S.C. §§ 4321 et seq., 4332. *McLean Gardens Residents, Asso. v. National Capital Planning Com.*, 390 F. Supp. 165, 1974 U.S. Dist. LEXIS 8239 (1974).

When passing on application for planned unit developments or amendments to zoning map and regulations the District of Columbia Zoning Commission is not free to ignore environmental policy; where the potential environmental effects of the Commission's decision are substantial, it must at least consider the environmental issue to fulfill its public interest mandate. District of Columbia Self-Government and Governmental Reorganization Act, §§ 203, 423, 492, 87 Stat. 774. *McLean Gardens Residents, Asso. v. National Capital Planning Com.*, 390 F. Supp. 165, 1974 U.S. Dist. LEXIS 8239 (1974).

Inasmuch as District of Columbia zoning commission which down-zoned substantial portion of downtown area was not a federal agency, no environmental impact statement was required. D.C. Code § 1-1501 et seq.; National Environmental Policy Act of 1969, § 102(2)(C), 42 U.S.C. § 4332(2)(C). *Ruppert v. Washington*, 366 F. Supp. 686, 1973 U.S. Dist. LEXIS 12806 (1973), affirmed without opinion by 543 F.2d 416, 177 U.S. App. D.C. 269 (1976), affirmed without opinion by 543 F.2d 417, 177 U.S. App. D.C. 270 (1976).

Exceptions or variances.

Ultimate factors established by zoning regulation as prerequisites for allowance of special exception permitting construction of private school in residential district must be satisfied before Board of Zoning Adjustment may lawfully issue decision on merits of application. D.C. Code 1961, §§ 5-413, 5-420. *Robey v. Schwab*, 307 F.2d 198, 1962 U.S. App. LEXIS 4845 (C.A.D.C. 1962).

"Variance" is form of administrative relief granted by the Board of Zoning Adjustment in response to specific requests for changes in

zoning plan; Board may also issue "use variances," which are changes in permitted use, and Board may also issue special exceptions, only in situations specified by zoning laws and only to the extent that Board can make necessary factual findings set forth in zoning laws. D.C. Code 1981, §§ 5-413 to 5-432; D.C. Mun.Reg. tit. 11, §§ 3107.2, 3108.1. *Western Presbyterian Church v. Board of Zoning Adjustment*, 862 F. Supp. 538, 1994 U.S. Dist. LEXIS 12768 (1994), dismissed by 1995 U.S. App. LEXIS 5085 (D.C. Cir. Feb. 3, 1995).

Whether exception should be granted for particular piece of property is within jurisdiction of board of zoning adjustment, subject to certain limitations. D.C. Code 1961, §§ 5-412, 5-413, 5-420. *Capital Properties, Inc. v. Zoning Com. of District of Columbia*, 229 F. Supp. 255, 1964 U.S. Dist. LEXIS 7042 (D.D.C.1964).

Administrative discretion committed to the Board of Zoning Adjustment to grant exceptions to zoning regulations is not unlimited and it must be a sound legal discretion, and whether a dispensation should be granted is not a matter of grace, but must be determined on legal principles. D.C. Code 1951, §§ 5-413, 5-420. *O'Boyle v. Coe*, 155 F.Supp. 581, 1957 U.S. Dist. LEXIS 2978 (D.D.C.1957).

An "exception" in a zoning ordinance is one allowable where facts and conditions detailed in ordinance, as those upon which an exception may be permitted, are found to exist. D.C. Code 1951, §§ 5-413 et seq., 5-420. *Hyman v. Coe*, 146 F.Supp. 24, 1956 U.S. Dist. LEXIS 2370 (D.D.C.1956).

Property owner who appeals to District of Columbia Board of Zoning Adjustment for exception under zoning law and regulations has burden of showing existence of conditions warranting granting of such an exception. D.C. Code 1951, §§ 5-413 et seq., 5-420. *Hyman v. Coe*, 146 F.Supp. 24, 1956 U.S. Dist. LEXIS 2370 (D.D.C.1956).

Where, pursuant to provision of zoning regulation authorizing District of Columbia Board of Zoning Adjustment to permit construction of office buildings and banks in certain residential area, owners of certain parcels of land in area had applied for and were granted permission to construct office buildings in area, in absence of evidence that conversion of plaintiffs' apartment building to office building would any more adversely affect present character and future development of neighborhood than did uses permitted by board of other properties in area, and in absence of evidence that use of plaintiff's property would render less desirable, for residential purposes, other property used as such in area, board's refusal to grant plaintiffs' appeal for exception was without reasonable foundation and constituted manifest abuse of discretion. D.C. Code 1951, §§ 5-413 et seq.,

5-420. *Hyman v. Coe*, 146 F.Supp. 24, 1956 U.S. Dist. LEXIS 2370 (D.D.C.1956).

It was not intent of zoning regulation relating to authorization of District of Columbia Board of Zoning Adjustment to grant request for special exceptions in certain cases upon certain conditions, that appeal for exception must be granted if certain requirements are met. D.C. Code 1951, §§ 5-413 et seq., 5-420. *Hyman v. Coe*, 146 F.Supp. 24, 1956 U.S. Dist. LEXIS 2370 (D.D.C.1956).

Upon appeal for exception, District of Columbia Board of Zoning Adjustment is to decide whether exception sought meets requirements of regulation; though this decision must result from exercise of sound discretion, that is, legal discretion, and must not be arbitrary, capricious or unreasonable. D.C. Code 1951, §§ 5-413 et seq., 5-420. *Hyman v. Coe*, 146 F.Supp. 24, 1956 U.S. Dist. LEXIS 2370 (D.D.C.1956).

Extraordinary or exceptional conditions of the boathouse property caused practical difficulties for zoning variance applicants, and thus, applicants were entitled to a variance from the 100-foot waterfront setback requirement, where the boathouse plan was completed before the new waterfront zoning classification was proposed, the setback was not required under the zoning classification originally requested by applicants, and a re-design of the boathouse to conform with the setback would have negatively affected its internal functionality, appearance, and stylistic consistency with neighboring structures. *Wash. Canoe Club v. District of Columbia Zoning Comm'n*, 889 A.2d 995, 2005 D.C. App. LEXIS 694 (2005).

In considering whether to grant or deny a variance, various factors are relevant, which include: (1) the weight of the burden of strict compliance; (2) the severity of the variance requested; and (3) the effect the proposed variance would have on the overall zone plan. *Wash. Canoe Club v. District of Columbia Zoning Comm'n*, 889 A.2d 995, 2005 D.C. App. LEXIS 694 (2005).

The uniqueness of a property as required for the issuance of a zoning variance can arise from a variety of factors; the critical point is that the extraordinary or exceptional condition must affect a single property. *Wash. Canoe Club v. District of Columbia Zoning Comm'n*, 889 A.2d 995, 2005 D.C. App. LEXIS 694 (2005).

In order to obtain variance relief, an applicant must show that: (1) there is an extraordinary or exceptional condition affecting the property; (2) practical difficulties will occur if the zoning regulations are strictly enforced; and (3) the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan. *Wash. Canoe Club v. District of Columbia Zon-*

ing Comm'n, 889 A.2d 995, 2005 D.C. App. LEXIS 694 (2005).

When evaluating whether an applicant is entitled to a special exception in a zoning district, the zoning commission is required to determine whether a reasonable accommodation has been made between the applicant and the surrounding properties; however, the applicant is not charged with considering every option that any party in opposition might conceptualize, and the commission is not required to give greater weight to one party's views as opposed to another. *Wash. Canoe Club v. District of Columbia Zoning Comm'n*, 889 A.2d 995, 2005 D.C. App. LEXIS 694 (2005).

The board of zoning adjustment (BZA) was authorized in approving a campus plan to ensure, by imposing appropriate requirements on the university, that, so far as reasonably possible, objectionable conditions would be avoided; regulations required that use as a college or university would be located so that it was not likely to become objectionable to neighboring property because of noise, traffic, the number of students or other objectionable conditions. *President & Dirs. of Georgetown College v. D.C. Bd. of Zoning Adjustment*, 837 A.2d 58, 2003 D.C. App. LEXIS 696 (2003), remanded by 925 A.2d 585, 2007 D.C. App. LEXIS 326 (D.C. 2007).

A college has no right to locate in a residentially zoned district unless it conforms to all of the requirements of the zoning regulations. *President & Dirs. of Georgetown College v. D.C. Bd. of Zoning Adjustment*, 837 A.2d 58, 2003 D.C. App. LEXIS 696 (2003), remanded by 925 A.2d 585, 2007 D.C. App. LEXIS 326 (D.C. 2007).

University was entitled, as a matter of right, to use former hotel as a dormitory in high-density residential district, without obtaining special exception, where hotel was not on university campus. *Watergate W., Inc. v. D.C. Bd. of Zoning Adjustment*, 815 A.2d 762, 2003 D.C. App. LEXIS 18 (2003).

Testimony that proposed left-turn lane could accommodate stacking of as many as five cars, and that Department of Public Works (DPW) would engage in "further refinements" during design process to maximize safety in turn lane and at stop light and intersection, established that traffic impacts of proposed school could be ameliorated, in application to Board of Zoning Adjustment (BZA) for special exception for private school in residential zone. *Neighbors Against Foxhall Gridlock v. D.C. Bd. of Zoning Adjustment*, 792 A.2d 246, 2002 D.C. App. LEXIS 43 (2002).

Exhaustion of administrative remedies.

Failure of challengers to issuance of building permit to pursue any action before Zoning Commission, which was exclusive agency vested

with responsibility for assuring that zoning regulations were not inconsistent with comprehensive plan, amounted to failure to exhaust administrative remedies. *Tenley & Cleveland Park Emergency Committee v. District of Columbia Bd. of Zoning Adjustment*, 550 A.2d 331, 1988 D.C. App. LEXIS 206 (1988), writ of certiorari denied by 489 U.S. 1082, 109 S. Ct. 1539, 103 L. Ed. 2d 843, 1989 U.S. LEXIS 1460, 57 U.S.L.W. 3620 (1989).

In general.

District of Columbia Council's interpretation of its responsibilities under Home Rule Act is entitled to great deference. D.C. Code 1981, § 1-201 et seq. *Tenley & Cleveland Park Emergency Committee v. District of Columbia Bd. of Zoning Adjustment*, 550 A.2d 331, 1988 D.C. App. LEXIS 206 (1988), writ of certiorari denied by 489 U.S. 1082, 109 S. Ct. 1539, 103 L. Ed. 2d 843, 1989 U.S. LEXIS 1460, 57 U.S.L.W. 3620 (1989).

The power to zone is legislative and the Zoning Commission, acting under delegated authority, is a quasi-legislative body. D.C. Code §§ 5-413, 5-415. *Citizens Asso. of Georgetown, Inc. v. Washington*, 291 A.2d 699, 1972 D.C. App. LEXIS 387 (1972).

Injunction and mandamus.

Where owners and operators of substantial rental property in close proximity to proposed community correctional center brought action for a preliminary and permanent injunction barring District of Columbia officials from using the premises as such a center on ground that the center was not a rooming house under District of Columbia zoning regulations, it was improper to determine merits and to issue a permanent injunction without requiring recourse under doctrine of primary jurisdiction to administrative remedies available to parties that would have provided guidance of administrative expertise which the courts should require. *Zoning Act of June 20, 1938*, 52 Stat. 797; D.C. Code §§ 5-412, 5-413, 5-420. *Brawner Bldg., Inc. v. Shehyn*, 442 F.2d 847, 1971 U.S. App. LEXIS 11721 (C.A.D.C. 1971).

Court had no right to substitute its judgment for that of District of Columbia Zoning Commission, and where nothing appeared to indicate that Commission's action in fixing minimum widths and sizes of residential lots was unreasonable or arbitrary, court could not enjoin enforcement of regulation. D.C. Code 1951, §§ 5-401 to 5-430, 5-413, 5-414, 5-417. *Salyer v. McLaughlin*, 240 F.2d 891, 1957 U.S. App. LEXIS 3425 (C.A.D.C. 1957).

Mandamus to compel issuance of permit to erect gasoline station did not lie where applicants failed to exhaust remedy by appeal (D.C. Code 1929, T. 25, § 521 et seq.) U.S. ex rel.

Connor v. District of Columbia, 61 F.2d 1015, 1932 U.S. App. LEXIS 4491 (1932).

Preliminary injunction against enforcement of down-zoning order of District of Columbia zoning commission would be denied where issues were novel, likelihood of success on merits appeared slight and there was no affirmative showing of urgent necessity for interference with major city planning efforts. Ruppert v. Washington, 366 F. Supp. 683, 1973 U.S. Dist. LEXIS 14560 (1973).

Judicial review.

— In general.

Landowners waived their right to hearing on probability of rezoning and its effect on value of the land by settling with government and were not entitled after settlement to maintain action against zoning commission for difference between value which they alleged that the land would have had if it had been rezoned and amount which they settled for with government on basis of existing zoning. U.S. Const. Amend. 5. Sittenfeld v. Tobriner, 459 F.2d 1137, 1971 U.S. App. LEXIS 6356 (C.A.D.C. 1971).

In bill to require District of Columbia Zoning Commission to rezone plaintiffs' lot as commercial instead of residential property, plaintiffs' failure to allege the contrary gave rise to presumption that all residence-zoned property adjoining or facing their lot, most of which was subject to identical conditions, could be and was used for residential purposes. Leventhal v. District of Columbia, 100 F.2d 94, 1938 U.S. App. LEXIS 2585 (1938).

In bill to require District of Columbia Zoning Commission to rezone plaintiffs' lot as commercial instead of residential property, plaintiffs' failure to allege the contrary gave rise to presumption that commercial-zoned property across the street from plaintiffs' lot was used for residential purposes. Leventhal v. District of Columbia, 100 F.2d 94, 1938 U.S. App. LEXIS 2585 (1938).

In bill to require District of Columbia Zoning Commission to rezone plaintiffs' lot as commercial instead of residential property, plaintiffs' failure to allege that other property in the neighborhood would not be injured or that there was need of more business property gave rise to presumption that the rezoning would actually inflict injury on the owners and occupants of other property in the neighborhood. Leventhal v. District of Columbia, 100 F.2d 94, 1938 U.S. App. LEXIS 2585 (1938).

Decisions of District of Columbia Zoning Adjustment Board are discretionary and should not be reversed by courts unless clearly arbitrary and unreasonable. D.C. Code 1951, §§ 5-413 et seq., 5-420. Hyman v. Coe, 146 F.Supp. 24, 1956 U.S. Dist. LEXIS 2370 (D.D.C.1956).

Where decision of District of Columbia Zoning Adjustment Board, upon review, is clearly unreasonable and arbitrary, it will be set aside; court is not bound by arbitrary or capricious action of board, or where there has been a manifest abuse of discretion. D.C. Code 1951, §§ 5-413 et seq., 5-420. Hyman v. Coe, 146 F.Supp. 24, 1956 U.S. Dist. LEXIS 2370 (D.D.C.1956).

There is a presumption that the regulations and acts of the zoning commission of the District of Columbia are reasonable. Act March 1, 1920, § 1 et seq., 41 Stat. 500; D.C. Code 1951, § 5-412 et seq. Hagans v. District of Columbia, 97 A.2d 922, 1953 D.C. App. LEXIS 151 (Cr.App. 1953).

— Scope of review, judicial review.

In reviewing exercise of discretion given to Zoning Commission for District of Columbia for establishment of a comprehensive zoning plan, it is not function of the court to substitute its judgment for that of the Commission even for reasons which appear most persuasive. D.C. Code 1940, § 5-412 et seq. Lewis v. District of Columbia, 190 F.2d 25, 1951 U.S. App. LEXIS 2373 (C.A.D.C. 1951).

Court reviewing decision of District of Columbia zoning commission has duty to assure that proceedings before the commission were essentially fair. D.C. Code § 1-1501 et seq.; National Environmental Policy Act of 1969, § 102(2)(C), 42 U.S.C. § 4332(2)(C). Ruppert v. Washington, 366 F. Supp. 686, 1973 U.S. Dist. LEXIS 12806 (1973), affirmed without opinion by 543 F.2d 416, 177 U.S. App. D.C. 269 (1976), affirmed without opinion by 543 F.2d 417, 177 U.S. App. D.C. 270 (1976).

In reviewing action of District of Columbia zoning commission, district court is not required to hold a trial de novo nor may it substitute its view of the evidence before the commission for that of the commission. D.C. Code § 1-1501 et seq.; National Environmental Policy Act of 1969, § 102(2)(C), 42 U.S.C. § 4332(2)(C). Ruppert v. Washington, 366 F. Supp. 686, 1973 U.S. Dist. LEXIS 12806 (1973), affirmed without opinion by 543 F.2d 416, 177 U.S. App. D.C. 269 (1976), affirmed without opinion by 543 F.2d 417, 177 U.S. App. D.C. 270 (1976).

Scope of judicial review of actions of zoning commission is very narrow, and court may not set aside action of commission merely because court might have decided other way had court been member of commission. D.C. Code 1961, §§ 5-412, 5-413, 5-420. Capital Properties, Inc. v. Zoning Com. of District of Columbia, 229 F. Supp. 255, 1964 U.S. Dist. LEXIS 7042 (D.D.C.1964).

An action to review a decision of the Board of Zoning Adjustment differs from an action to review an order of the Zoning Commission in

that latter suit involves the question of whether the property has been taken without due process of law. D.C. Code 1951, §§ 5-413, 5-420. *O'Boyle v. Coe*, 155 F.Supp. 581, 1957 U.S. Dist. LEXIS 2978 (D.D.C.1957).

When reviewing an order of the zoning commission, like decisions of other agencies, the Court of Appeals gives great deference to the agency's findings supporting the decision; the Court does not reassess the merits of the decision, but instead determines whether the findings and conclusions were arbitrary, capricious, or an abuse of discretion, or not supported by substantial evidence. *Wash. Canoe Club v. District of Columbia Zoning Comm'n*, 889 A.2d 995, 2005 D.C. App. LEXIS 694 (2005).

Decision by District of Columbia Zoning Commission, after public hearing, that halfway houses should be permitted in R-4 and less restricted districts was legislative in character and not subject to the "contested cases" procedural safeguards of the District of Columbia Administrative Procedure Act, so that court could not review the underlying merits of any questions or issues raised at hearing. D.C. Code §§ 5-413 to 5-415. *Dupont Circle Citizen's Assn. v. District of Columbia Zoning Com.*, 343 A.2d 296, 1975 D.C. App. LEXIS 433 (1975).

— Standard of review, judicial review.

In reviewing refusal by District of Columbia Zoning Commission to enact interim amendment to zoning ordinance preventing major construction not in conformance with National Capitol Planning Commission's comprehensive recommendations as to development of waterfront area until completion of pending area study, Court of Appeals would consider only whether Commission acted arbitrarily and capriciously, i. e., whether its decision had no substantial relationship to the general welfare. D.C. Code §§ 1-1001 et seq., 1-1008(a), 5-413. *Citizens Ass'n of Georgetown, Inc. v. Zoning Com. of District of Columbia*, 477 F.2d 402, 1973 U.S. App. LEXIS 11831 (C.A.D.C. 1973).

In performing its function of judicial review, the district court of the District of Columbia considers the zoning board's findings and determinations and will not substitute its judgment so long as there is a rational basis for the board's opinion. Zoning Act of June 20, 1938, 52 Stat. 797; D.C. Code §§ 5-412, 5-413, 5-420. *Brawner Bldg., Inc. v. Shehyn*, 442 F.2d 847, 1971 U.S. App. LEXIS 11721 (C.A.D.C. 1971).

On appeal from decree sustaining motion to dismiss bill in equity to require the Zoning Commission of the District of Columbia to re-zone plaintiffs' lot as commercial instead of residential property, the question was whether the facts alleged in the plaintiffs' bill, if taken as true, showed beyond debate that the present residential zoning of plaintiffs' lot was arbitrary and unreasonable. *Leventhal v. District of*

Columbia, 100 F.2d 94, 1938 U.S. App. LEXIS 2585 (1938).

Review of decision of District of Columbia zoning commission ends with determining whether decision is arbitrary and capricious. *Ruppert v. Washington*, 366 F. Supp. 686, 1973 U.S. Dist. LEXIS 12806 (1973), affirmed without opinion by 543 F.2d 416, 177 U.S. App. D.C. 269 (1976), affirmed without opinion by 543 F.2d 417, 177 U.S. App. D.C. 270 (1976).

Court's task in reviewing decision of District of Columbia zoning commission is not to weigh the persuasiveness of the respective positions, but to decide if there is evidence in the record before the commission to support the statement of reasons given for the action taken and, if so, whether those reasons support the commission's order. *Ruppert v. Washington*, 366 F. Supp. 686, 1973 U.S. Dist. LEXIS 12806 (1973), affirmed without opinion by 543 F.2d 416, 177 U.S. App. D.C. 269 (1976), affirmed without opinion by 543 F.2d 417, 177 U.S. App. D.C. 270 (1976).

Where zoning regulation formulated certain standards to guide the actions of the Board of Zoning Adjustment in granting exceptions to zoning regulations, court could set aside an action of the board in denying an exception to the regulations if it found that its decision was "arbitrary or capricious"; the quoted phrase having no opprobrious connotation but in technical legal significance meaning an administrative action not supported by evidence, or lacking a rational basis. D.C. Code 1951, §§ 5-413, 5-420. *O'Boyle v. Coe*, 155 F.Supp. 581, 1957 U.S. Dist. LEXIS 2978 (D.D.C.1957).

Jurisdiction.

Suit in equity by property owner to require zoning commission of District of Columbia to re-zone property so as to permit erection of apartment house held not subject to dismissal on ground that there was an adequate remedy at law by petition for mandamus directed against building inspectors to compel issuance of building permit for an apartment. *Hazen v. Hawley*, 86 F.2d 217, 1936 U.S. App. LEXIS 3697 (1936).

Proceedings held under the District of Columbia zoning commission's rules of practice, resulting in down-zoning of area, were not a "contested case" within meaning of Administrative Procedure Act, but were adversary in nature and equity could be invoked. U.S. Const. Amend. 5; 5 U.S.C. § 501 et seq. *Ruppert v. Washington*, 366 F. Supp. 683, 1973 U.S. Dist. LEXIS 14560 (1973).

Fact that plaintiffs claiming that District of Columbia zoning commission acted arbitrarily and illegally in down-zoning area, had requested, after suit was filed, that commission state its reasons in form of motion for reconsideration did not defeat jurisdiction to review

commission's action where there was no likelihood of favorable action by the commission. U.S. Const. Amend. 5; 5 U.S.C. § 501 et seq. *Ruppert v. Washington*, 366 F. Supp. 683, 1973 U.S. Dist. LEXIS 14560 (1973).

Approval of a preliminary application for a planned unit development was a contested case under the District of Columbia's Administrative Procedure Act and is properly reviewable as a final order. D.C. Code § 1-1510. *Dupont Circle Citizens Assn. v. District of Columbia Zoning Com.*, 426 A.2d 327, 1981 D.C. App. LEXIS 211 (1981).

Controversy which arose out of zoning commission's actions in granting change in zoning so as to permit townhouse development, which action followed an adjudicatory hearing, was a "contested case" so that Court of Appeals had jurisdiction to review the action. D.C. Code § 1-1510. *Palisades Citizens Assoc., Inc. v. District of Columbia Zoning Com.*, 368 A.2d 1143, 1977 D.C. App. LEXIS 413 (1977).

Court of Appeals has jurisdiction to review decisions of the Zoning Commission in accordance with the Administrative Procedure Act, limited only to those decisions or orders entered in contested cases. D.C. Code §§ 1-1501 et seq., 1-1502(8), 1-1510, 11-722. *W. C. & A. N. Miller Dev. Co. v. District of Columbia Zoning Com.*, 340 A.2d 420, 1975 D.C. App. LEXIS 372 (1975).

When Zoning Commission exercised its authority to determine needs of area by denying without public hearing a proposed amendment to zoning maps to change zoning classification of property the Commission was acting legislatively and was not subject to the "contested case" provisions of Administrative Procedure Act, with the result that such decision was not subject to direct review by the Court of Appeals, despite contention of property owner that mere submission of proposed amendment, and the subsequent rejection of same, constituted a "hearing" required by law, and thus was subject to review. D.C. Code §§ 1-1501 et seq., 1-1502(8), 1-1510, 5-413, 11-722. *W. C. & A. N. Miller Dev. Co. v. District of Columbia Zoning Com.*, 340 A.2d 420, 1975 D.C. App. LEXIS 372 (1975).

Lot size.

District of Columbia Zoning Commission had ample statutory authority for action taken in fixing minimum width and sizes of residential lots. D.C. Code 1951, §§ 5-413, 5-414. *Salzer v. McLaughlin*, 240 F.2d 891, 1957 U.S. App. LEXIS 3425 (C.A.D.C. 1957).

House museum in residential neighborhood was entitled to special exception to allow it to use dower house on adjacent property, although neighborhood association asserted that adjacent property was not on the same lot of record; house had to be on same "lot," not on same "lot

of record," as recorded in municipal surveyor's records. *Georgetown Residents Alliance v. D.C. Bd. of Zoning Adjustment*, 802 A.2d 359, 2002 D.C. App. LEXIS 374 (2002).

While a "lot," for purposes of zoning regulations, is a general term used to describe any plot of land, a "lot of record" is a lot platted and recorded by the District of Columbia Surveyor. *Georgetown Residents Alliance v. D.C. Bd. of Zoning Adjustment*, 802 A.2d 359, 2002 D.C. App. LEXIS 374 (2002).

Modification of regulations, generally.

Zoning commission's approval of preliminary application for planned unit development conditioned on rezoning of a section of the planned unit development area was not, in effect, a final rezoning. *Dupont Circle Citizens Assn. v. District of Columbia Zoning Com.*, 426 A.2d 327, 1981 D.C. App. LEXIS 211 (1981).

It was not necessary to show mistake in previous zoning in order to permit change in zoning, on the grounds of substantial change, so as to permit townhouse development. *Palisades Citizens Assoc., Inc. v. District of Columbia Zoning Com.*, 368 A.2d 1143, 1977 D.C. App. LEXIS 413 (1977).

Action of zoning commission in approving zoning change on property to permit townhouse development did not constitute spot zoning. *Palisades Citizens Assoc., Inc. v. District of Columbia Zoning Com.*, 368 A.2d 1143, 1977 D.C. App. LEXIS 413 (1977).

Once a single parcel of land is rezoned it necessarily affects the surrounding area because a use previously prohibited in the area is now allowed, and it also invites other area property owners to apply for similar amendments, so that rezoning decision, while affecting individual landowner who proposes amendment of zoning ordinance, is basically one of policy which takes into consideration the needs of the area as a whole. *W. C. & A. N. Miller Dev. Co. v. District of Columbia Zoning Com.*, 340 A.2d 420, 1975 D.C. App. LEXIS 372 (1975).

Since the act of zoning is primarily legislative and is presumed to be valid, original classification of property of petitioner who desired to change zoning classification was valid. *W. C. & A. N. Miller Dev. Co. v. District of Columbia Zoning Com.*, 340 A.2d 420, 1975 D.C. App. LEXIS 372 (1975).

Sole authority for any amendment of zoning regulations relating to parking was in zoning commission, not Board of Zoning Adjustment. D.C. Code §§ 5-413, 5-420. *Citizens Assn. of Georgetown, Inc. v. District of Columbia Board of Zoning Adjustment*, 337 A.2d 495, 1975 D.C. App. LEXIS 377 (1975).

Nonconforming use.

Nonconforming use is an exception to generally applicable zoning requirement for previ-

ously lawful, existing use. *George Washington University v. District of Columbia Bd. of Zoning Adjustment*, 429 A.2d 1342, 1981 D.C. App. LEXIS 254 (1981).

Board of zoning adjustment's interpretation of zoning regulation, which prohibited the enlargement of structures devoted to nonconforming uses, to prohibit enlargement of a structure containing a nonconforming use, even when the proposed enlargement is intended for a conforming use, was not clearly erroneous, was not inconsistent with the zoning regulations as a whole, and was not inconsistent with the Zoning Enabling Act. D.C. Code §§ 5-413 to 5-428. *Lenkin v. District of Columbia Bd. of Zoning Adjustment*, 428 A.2d 356, 1981 D.C. App. LEXIS 231 (1981).

1938 District of Columbia Zoning Act providing, in effect, that lawful use of premises prior to adoption of any regulations under 1920 or 1938 District of Columbia Zoning Acts may be continued, although such use does not conform with provisions of such regulations binding on zoning commission and if party can show prior nonconforming use, he is entitled to a certificate of occupancy. Act March 1, 1920, §§ 1 et seq., 2, 41 Stat. 500; D.C. Code 1951, §§ 5-412 et seq., 5-419. *Hagans v. District of Columbia*, 97 A.2d 922, 1953 D.C. App. LEXIS 151 (Cr.App. 1953).

Even if refusal of zoning commissioners of District of Columbia to issue license to conduct rooming house to defendant was wrongful, defendant had no right to continue business without such license. Act March 1, 1920, § 2, 41 Stat. 500; D.C. Code 1951, §§ 5-412 et seq., 5-419. *Hagans v. District of Columbia*, 97 A.2d 922, 1953 D.C. App. LEXIS 151 (Cr.App. 1953).

Planned unit developments.

The Zoning Commission had the authority to approve developer's application for a planned unit development (PUD) and a related zoning map amendment simultaneously to conditionally removing the property from a commercial overlay district, without prior Board of Zoning Adjustment (BZA) approval, though such approval would otherwise have been required; statutes granted the Commission a broad general authority over zoning matters, the Commission was entrusted with reviewing and approving PUD applications, and the zoning regulations did not prohibit the use of PUDs in conjunction with approval of a zoning map amendment to remove property from a neighborhood commercial overlay district without BZA approval. *Wisconsin-Newark Neighborhood Coalition v. D.C. Zoning Comm'n*, 33 A.3d 382, 2011 D.C. App. LEXIS 691 (2011).

District of Columbia Zoning Commission had authority to approve planned unit development application which included off-site housing

amenity in nearby neighborhood. D.C. Code 1981, § 5-413. *Blagden Alley Ass'n v. District of Columbia Zoning Com.*, 590 A.2d 139, 1991 D.C. App. LEXIS 103 (1991).

Campus plan for George Washington University does not control the use of private property located within the campus boundaries owned by others than the University. *George Washington University v. District of Columbia Bd. of Zoning Adjustment*, 429 A.2d 1342, 1981 D.C. App. LEXIS 254 (1981).

Determination of whether planned unit development application meets the intended purposes of zoning regulations is best answered by the zoning commission, which has the expertise to make such a broad justification based on elements of fact, policy, and experience. *Dupont Circle Citizens Asso. v. District of Columbia Zoning Com.*, 426 A.2d 327, 1981 D.C. App. LEXIS 211 (1981).

Provisions of the District of Columbia zoning regulations governing planned unit developments do not require applicants for a PUD to provide substantial evidence at hearings that the facility which they propose is superior in several ways to any which is available under the general provisions of the zoning regulation. *Dupont Circle Citizens Asso. v. District of Columbia Zoning Com.*, 426 A.2d 327, 1981 D.C. App. LEXIS 211 (1981).

Substantive evidence need not support conclusion that planned unit development facilities are superior to those available under the general regulations. *Dupont Circle Citizens Asso. v. District of Columbia Zoning Com.*, 426 A.2d 327, 1981 D.C. App. LEXIS 211 (1981).

Implicit in the concept of a planned unit development is the recognition that, although the type of growth involved is an objective of the zoning regulations, it is often difficult to achieve with piecemeal, lot by lot, development. *Dupont Circle Citizens Asso. v. District of Columbia Zoning Com.*, 426 A.2d 327, 1981 D.C. App. LEXIS 211 (1981).

Where total floor area ratio for planned unit development is determinative figure, rather than floor area ratio for each building, there is no impediment to permitting payment for transfer of development rights from one building owner to another within same project when agreed to by the parties. D.C. Code § 5-413. *Dupont Circle Citizens Asso. v. District of Columbia Zoning Com.*, 355 A.2d 550, 1976 D.C. App. LEXIS 489 (1976), writ of certiorari denied by 429 U.S. 966, 97 S. Ct. 396, 50 L. Ed. 2d 334, 1976 U.S. LEXIS 3628 (1976).

Zoning Act and regulations permit zoning commission to approve transfer of development rights within planned unit development. D.C. Code § 5-413. *Dupont Circle Citizens Asso. v. District of Columbia Zoning Com.*, 355 A.2d

550, 1976 D.C. App. LEXIS 489 (1976), writ of certiorari denied by 429 U.S. 966, 97 S. Ct. 396, 50 L. Ed. 2d 334, 1976 U.S. LEXIS 3628 (1976).

Powers generally.

Zoning Administrator is limited to enforcing and certifying occupancy regulations. *Tenley & Cleveland Park Emergency Committee v. District of Columbia Bd. of Zoning Adjustment*, 550 A.2d 331, 1988 D.C. App. LEXIS 206 (1988), writ of certiorari denied by 489 U.S. 1082, 109 S. Ct. 1539, 103 L. Ed. 2d 843, 1989 U.S. LEXIS 1460, 57 U.S.L.W. 3620 (1989).

Zoning Commission is exclusive agency vested with responsibility for assuring that zoning regulations are not inconsistent with comprehensive plan. *Tenley & Cleveland Park Emergency Committee v. District of Columbia Bd. of Zoning Adjustment*, 550 A.2d 331, 1988 D.C. App. LEXIS 206 (1988), writ of certiorari denied by 489 U.S. 1082, 109 S. Ct. 1539, 103 L. Ed. 2d 843, 1989 U.S. LEXIS 1460, 57 U.S.L.W. 3620 (1989).

Board of Zoning Appeals and Zoning Administrator have no power to implement comprehensive plan. D.C. Code 1981, § 5-424(e). *Tenley & Cleveland Park Emergency Committee v. District of Columbia Bd. of Zoning Adjustment*, 550 A.2d 331, 1988 D.C. App. LEXIS 206 (1988), writ of certiorari denied by 489 U.S. 1082, 109 S. Ct. 1539, 103 L. Ed. 2d 843, 1989 U.S. LEXIS 1460, 57 U.S.L.W. 3620 (1989).

Divisions of a city into zoning districts may be made as a valid exercise of police power. *Hagans v. District of Columbia*, 97 A.2d 922, 1953 D.C. App. LEXIS 151 (Cr.App. 1953).

Under statute authorizing zoning commission to divide District of Columbia into height, area, and use districts and to regulate height and area of buildings and purposes for which buildings and premises therein may be used, commission had power to create residential restricted zoning use district. Act March 1, 1920, § 1 et seq., 41 Stat. 500; D.C. Code 1951, § 5-412 et seq. *Hagans v. District of Columbia*, 97 A.2d 922, 1953 D.C. App. LEXIS 151 (Cr.App. 1953).

Preservation of issues.

Owner of adjacent apartment building and citizens group opposing modification to planned unit development (PUD), which proposed conversion of hotel to a cooperative apartment building, waived on appeal argument that zoning regulations required owner of adjacent apartment building to sign application for modification because restaurant, parking spaces and health club that served the hotel and which hotel controlled through a long term lease were located on apartment building owner's property, as opponents did not raise the argument before the District of Columbia Zoning Commission, an enormous amount of time had been

expended in the administrative proceeding before the Commission, and issue of whether apartment building owner was required to sign the application did not raise a jurisdictional issue. *Watergate E. Comm. Against Hotel Conversion to Co-Op Apts. v. D.C. Zoning Comm'n*, 953 A.2d 1036, 2008 D.C. App. LEXIS 333 (2008).

Presumptions.

Actions of District of Columbia Zoning Commission are entitled to presumption of validity; however, the Commission must put forward or the court must be otherwise able to discern some basis in fact and law to justify Commission's action as consistent with reasonableness. D.C. Code § 5-413. *Citizens Ass'n of Georgetown, Inc. v. Zoning Com. of District of Columbia*, 477 F.2d 402, 1973 U.S. App. LEXIS 11831 (C.A.D.C. 1973).

Purpose.

Residential zoning is not invalidated by the fact that if the property were available for business purposes its market value would be greatly enhanced. *Leventhal v. District of Columbia*, 100 F.2d 94, 1938 U.S. App. LEXIS 2585 (1938).

Evidence of greater income from plaintiff's property if his property were rezoned as he wished, even if such evidence were not too speculative to support a finding, did not establish abuse of zoning commission's action in declining to rezone as requested. D.C. Code 1961, §§ 5-412, 5-413, 5-420. *Capital Properties, Inc. v. Zoning Com. of District of Columbia*, 229 F. Supp. 255, 1964 U.S. Dist. LEXIS 7042 (D.D.C.1964).

Purpose of zoning is to create districts, large or small, and not to zone or rezone specific property. D.C. Code 1961, §§ 5-412, 5-413, 5-420. *Capital Properties, Inc. v. Zoning Com. of District of Columbia*, 229 F. Supp. 255, 1964 U.S. Dist. LEXIS 7042 (D.D.C.1964).

Provision of zoning regulation authorizing District of Columbia Board of Zoning Adjustment to permit construction of office buildings and banks in certain residential area if certain conditions were satisfied, was not directive to board to preserve residential character of area, especially in view of fact that board had already allowed in area many changes which could not be said to have preserved residential character of area. D.C. Code 1951, §§ 5-413 et seq., 5-420. *Hyman v. Coe*, 146 F.Supp. 24, 1956 U.S. Dist. LEXIS 2370 (D.D.C.1956).

Zoning commission may use zoning to accomplish historical preservation. D.C. Code § 5-413. *Dupont Circle Citizens Assn. v. District of Columbia Zoning Com.*, 355 A.2d 550, 1976 D.C. App. LEXIS 489 (1976), writ of certiorari denied by 429 U.S. 966, 97 S. Ct. 396, 50 L. Ed. 2d 334, 1976 U.S. LEXIS 3628 (1976).

Record.

If District of Columbia zoning commission in

down-zoning downtown area acted for reasons not a matter of record, court would be required to find its actions arbitrary. D.C. Code § 1-1501 et seq.; National Environmental Policy Act of 1969, § 102(2)(C), 42 U.S.C. § 4332(2)(C). *Ruppert v. Washington*, 366 F. Supp. 686, 1973 U.S. Dist. LEXIS 12806 (1973), affirmed without opinion by 543 F.2d 416, 177 U.S. App. D.C. 269 (1976), affirmed without opinion by 543 F.2d 417, 177 U.S. App. D.C. 270 (1976).

Ordinarily, review by court of decision of Board of Zoning Adjustment of District of Columbia would be limited to Board's record of proceedings before it, and court would not be permitted to hear evidence dehors that record. D.C. Code 1961, §§ 1-216, 1-218, 5-412, 5-413, 5-414, 5-420. *Jarrott v. Scrivener*, 225 F. Supp. 827, 1964 U.S. Dist. LEXIS 7576 (D.D.C.1964).

Where integrity of decision of Board of Zoning Adjustment of District of Columbia was questioned, court could go outside Board's record and receive independent evidence. D.C. Code 1961, §§ 1-216, 1-218, 5-412, 5-413, 5-414, 5-420. *Jarrott v. Scrivener*, 225 F. Supp. 827, 1964 U.S. Dist. LEXIS 7576 (D.D.C.1964).

Regulations generally.

Zoning regulations of the District of Columbia afford no privileged position to colleges or universities. *President & Dirs. of Georgetown College v. D.C. Bd. of Zoning Adjustment*, 837 A.2d 58, 2003 D.C. App. LEXIS 696 (2003), remanded by 925 A.2d 585, 2007 D.C. App. LEXIS 326 (D.C. 2007).

Neither District of Columbia Self Government Act nor District of Columbia Comprehensive Plan Act of 1984 imposed moratorium on private real estate development permitted as a matter of right under applicable zoning regulations, even if regulations may have been inconsistent with District's comprehensive plan. D.C. Code 1981, §§ 1-201 et seq., 1-245 et seq. *Tenley & Cleveland Park Emergency Committee v. District of Columbia Bd. of Zoning Adjustment*, 550 A.2d 331, 1988 D.C. App. LEXIS 206 (1988), writ of certiorari denied by 489 U.S. 1082, 109 S. Ct. 1539, 103 L. Ed. 2d 843, 1989 U.S. LEXIS 1460, 57 U.S.L.W. 3620 (1989).

Reports or recommendations.

The District of Columbia Zoning Commission, in determining whether to adopt interim amendment to zoning ordinance preventing major construction in waterfront area until completion of study looking toward implementation of National Capitol Planning Commission's comprehensive land use plan, was not bound to follow NCP's recommendation to adopt interim amendment; Zoning Commission was not required to show a compelling public interest before it could override recommendation. D.C. Code §§ 1-1001 et seq., 1-1008(a), 5-413. *Citizens Ass'n of Georgetown, Inc. v.*

Zoning Com. of District of Columbia, 477 F.2d 402, 1973 U.S. App. LEXIS 11831 (C.A.D.C. 1973).

District of Columbia Zoning Commission must accord substantial weight and respect to the National Planning Commission's statutorily authorized commentary on proposed maps, regulations and amendments to the comprehensive plan; the record must contain a strong basis for resort to a different interpretation. D.C. Code §§ 1-1002, 1-1004(a), 1-121, 1-126, 1-1001 et seq., 1-1002(a)(4), (a)(4)(D, F), (e), 1-1008(a), 1-1510, 5-413, 5-414; U.S. Const. art. 1, § 8, cl. 17. *Capitol Hill Restoration Soc. v. Zoning Com.*, 380 A.2d 174, 1977 D.C. App. LEXIS 278 (1977).

Sufficiency of evidence.

Evidence held to sustain chancellor's finding that zoning of property as restricted area district in District of Columbia, which precluded erection of apartment house thereon, was arbitrary. *Hazen v. Hawley*, 86 F.2d 217, 1936 U.S. App. LEXIS 3697 (1936).

In property owner's suit to require re-zoning so as to permit erection of apartment, evidence held insufficient to support decree requiring property to be re-zoned into either one of two designated areas so as to permit erection thereon of an apartment, and hence decree was modified so as to permit zoning commission to re-zone property to one of three areas after hearing. *Hazen v. Hawley*, 86 F.2d 217, 1936 U.S. App. LEXIS 3697 (1936).

Conflicting evidence as to whether continued inclusion of plaintiff's property in restricted area district bore any reasonable relation to protection of public health, safety, and protection of property supported finding that action of District of Columbia zoning commission was not arbitrary in denying petition for rezoning. D.C. Code 1929, T. 25, § 521 et seq. *Hazen v. Hawley*, 86 F.2d 217, 1936 U.S. App. LEXIS 3697 (1936).

Decision of District of Columbia zoning commission down-zoning a substantial portion of downtown area had a substantial relationship to the general welfare and was supported by adequate reasons. D.C. Code § 1-1501 et seq.; National Environmental Policy Act of 1969, § 102(2)(C), 42 U.S.C. § 4332(2)(C). *Ruppert v. Washington*, 366 F. Supp. 686, 1973 U.S. Dist. LEXIS 12806 (1973), affirmed without opinion by 543 F.2d 416, 177 U.S. App. D.C. 269 (1976), affirmed without opinion by 543 F.2d 417, 177 U.S. App. D.C. 270 (1976).

Zoning commission's finding that grant of variance from 100-foot waterfront setback requirement for boathouse did not impair the integrity of the zone plan was supported by substantial evidence, where the commission specifically determined that the boathouse would not cause substantial detriment to the

public good, but rather that the boathouse would create additional recreational opportunities and provide public access along the riverfront. *Wash. Canoe Club v. District of Columbia Zoning Comm'n*, 889 A.2d 995, 2005 D.C. App. LEXIS 694 (2005).

Zoning commission's finding that boathouse property was unique so as to require a variance from the 100-foot setback zoning requirement was supported by substantial evidence, where the combination of the property's shallowness, boundary on the river shoreline, and proximity to trail made it impossible to build any structure without a relaxation of the setback requirement, and further revision of the design of the boathouse to conform to the waterfront setback would have impeded the storage of boats near the area of their primary use. *Wash. Canoe Club v. District of Columbia Zoning Comm'n*, 889 A.2d 995, 2005 D.C. App. LEXIS 694 (2005).

Zoning commission's finding that construction of boathouse would have a minimal negative impact to adjoining properties was supported by substantial evidence, where boathouse would result in the relocation of a trail by a few feet, and it would have some impact on views of the water from the trail, but the boathouse would animate a portion of the trail, provide more users, and provide a point of interest at the trailhead, and the commission outlined the steps that would be taken to address environmental and traffic concerns. *Wash. Canoe Club v. District of Columbia Zoning Comm'n*, 889 A.2d 995, 2005 D.C. App. LEXIS 694 (2005).

Evidence that combined frontage of private-school property could actually provide 512 feet for combined taper, deceleration lane, and stacking lane for left turns, that Department of Public Works (DPW) would engage in "further refinements" during design process, and that other measures, such as staggered hours of school opening, mandatory car pooling by students, and shuttle bus service to public transit locations, would reduce expected impact of traffic, established that combined 474-foot minimum distance of taper, deceleration lane, and stacking lane for left turns was sufficient so that private school was not likely to become objectionable to adjoining and nearby properties because of traffic conditions, as element for special exception for private school in residential zone. *Neighbors Against Foxhall Gridlock v. D.C. Bd. of Zoning Adjustment*, 792 A.2d 246, 2002 D.C. App. LEXIS 43 (2002).

Evidence that private school's buildings would occupy only seven percent of the 10.5-acre property and that total impervious surface was only 27 percent, while the residential district had lot occupancy limit of 40 percent, and that measures could ameliorate impacts of noise, traffic, storm water run-off, and other

objectionable effects, established that special exception for private school would be in harmony with general purpose and intent of residential zoning in the neighborhood. *Neighbors Against Foxhall Gridlock v. D.C. Bd. of Zoning Adjustment*, 792 A.2d 246, 2002 D.C. App. LEXIS 43 (2002).

Zoning commission which isolated and ruled on traffic impact, proposed parking, pollution impact, proposed commercial use, loss and addition of proposed residential development, projected economic benefit, and light and ventilation to the neighboring apartment building adequately complied with the substantial evidence requirement of the District of Columbia Administrative Procedure Act in granting its approval to the planned unit development. *D.C. Code § 1-1509(e)*. *Dupont Circle Citizens Assn. v. District of Columbia Zoning Com.*, 426 A.2d 327, 1981 D.C. App. LEXIS 211 (1981).

Evidence that there had been substantial changes in the neighborhood since adoption of comprehensive zoning plan and that zoning change to permit townhouse development would promote orderly development of the property and would be in harmony with the comprehensive plan was sufficient showing of substantial change to sustain rezoning. *Palisades Citizens Assoc., Inc. v. District of Columbia Zoning Com.*, 368 A.2d 1143, 1977 D.C. App. LEXIS 413 (1977).

Uniformity of regulations.

Zoning regulations held not discriminatory because permitting use of lands in residential districts for public recreational purposes while denying to private individuals similar use, such as for golf course. *D.C. Code 1929, T. 25, § 521 et seq.*; *Const.U.S. Amend. 14*. *Golf, Inc. v. District of Columbia*, 67 F.2d 575, 1933 U.S. App. LEXIS 4550 (1933).

Zoning laws apply to educational institutions, and universities are not immune from land use controls. *President & Dirs. of Georgetown College v. D.C. Bd. of Zoning Adjustment*, 837 A.2d 58, 2003 D.C. App. LEXIS 696 (2003), remanded by 925 A.2d 585, 2007 D.C. App. LEXIS 326 (D.C. 2007).

Zoning regulations dealing with planned unit developments did not violate uniformity provisions of Zoning Act. *D.C. Code § 5-413*. *Dupont Circle Citizens Assn. v. District of Columbia Zoning Com.*, 355 A.2d 550, 1976 D.C. App. LEXIS 489 (1976), writ of certiorari denied by 429 U.S. 966, 97 S. Ct. 396, 50 L. Ed. 2d 334, 1976 U.S. LEXIS 3628 (1976).

Zoning Act requires only that zoning regulations be applied uniformly to all property throughout district, with all owners of same class being treated alike, and uniformity provision does not prohibit classification which is reasonable. *D.C. Code § 5-413*. *Dupont Circle Citizens Assn. v. District of Columbia Zoning*

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Com., 355 A.2d 550, 1976 D.C. App. LEXIS 489 (1976), writ of certiorari denied by 429 U.S. 966, 97 S. Ct. 396, 50 L. Ed. 2d 334, 1976 U.S. LEXIS 3628 (1976).

property, in violation of Constitution (Zoning Act March 1, 1920 [41 Stat. 500]; Const. Amend. 5). *Larrabee v. Bell*, 10 F.2d 986, 1926 U.S. App. LEXIS 2314 (1926).

Validity.

Zoning Act held not deprivation of private

§ 6-641.02. Zoning regulations — Purpose.

Zoning maps and regulations, and amendments thereto, shall not be inconsistent with the comprehensive plan for the national capital, and zoning regulations shall be designed to lessen congestion in the street, to secure safety from fire, panic, and other dangers, to promote health and the general welfare, to provide adequate light and air, to prevent the undue concentration of population and the overcrowding of land, and to promote such distribution of population and of the uses of land as would tend to create conditions favorable to health, safety, transportation, prosperity, protection of property, civic activity, and recreational, educational, and cultural opportunities, and as would tend to further economy and efficiency in the supply of public services. Such regulations shall be made with reasonable consideration, among other things, of the character of the respective districts and their suitability for the uses provided in the regulations, and with a view to encouraging stability of districts and of land values therein.

(June 20, 1938, 52 Stat. 797, ch. 534, § 2; Dec. 24, 1973, 87 Stat. 810, Pub. L. 93-198, title IV, § 492(b)(1).)

Cross references. — National Capital Planning Commission, comprehensive plan for national capital, see § 2-1003.

Prior Codifications. — 1981 Ed., § 5-414.

1973 Ed., § 5-414.

Editor's notes. — Zoning Review Task Force: See Historical and Statutory Notes following § 6-641.01.

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Amendment of regulations.

Neither a showing of mistake in original zoning nor demonstration of substantial change in area since time of such zoning is necessary to justify amendment of zoning map. D.C. Code § 5-414. *Citizens Asso. of George-*

town, Inc. v. District of Columbia Zoning Com., 402 A.2d 36, 1979 D.C. App. LEXIS 364 (1979).

Where amendment of zoning map rezoning residential area for commercial expansion of supermarket was not out of harmony with comprehensive plan, with character of surrounding property, or with purposes of zoning regulation, zoning commission's action approving amendment did not amount to illegal "spot zoning," even though amendment affected only limited area to advantage of single owner. D.C. Code § 5-414. *Citizens Asso. of Georgetown, Inc. v. District of Columbia Zoning Com.*, 402 A.2d 36, 1979 D.C. App. LEXIS 364 (1979).

Zoning Commission is not required to find evidence that character of zoning district has substantially changed since promulgation of zoning map in order to reclassify a particular parcel within district. D.C. Code § 5-414. *Rock Creek East Neighborhood League, Inc. v. District of Columbia Zoning Com.*, 388 A.2d 450, 1978 D.C. App. LEXIS 470 (1978).

Rezoning of 2.2-acre of vacant parcel to permit more intensive development than limited residential use did not constitute unlawful "spot zoning" since the amendment did not violate the comprehensive plan. D.C. Code § 5-414. Capitol Hill Restoration Soc. v. Zoning Com., 380 A.2d 174, 1977 D.C. App. LEXIS 278 (1977).

Board of zoning adjustment.

In ruling on supermarket's application for special exceptions to build parking lot in a residentially zoned area adjoining site of supermarket's proposed store, zoning board's application of zoning regulation pertaining to "parking lots" rather than application of regulation pertaining to "parking spaces" that are "accessory" to another use was not plainly erroneous nor inconsistent with the regulations and board's failure to consider application in light of statutory section enumerating general purposes of the zoning regulations was not erroneous. D.C. Code §§ 5-414, 5-420. Friendship Neighborhood Coalition v. District of Columbia Board of Zoning Adjustment, 403 A.2d 291, 1979 D.C. App. LEXIS 394 (1979).

Interpretation of relevant statutes and zoning regulations by the District of Columbia Board of Zoning Adjustment, which, in respect to application for "special exception" to allow the construction of a private school in single-family residential area, refused to consider the purposes set forth in statute as adjudicatory standards in making the "special exception" determination, and which refused to allow the introduction of factual evidence regarding the impact upon public schools in the area, was not plainly erroneous or inconsistent with the statutes or regulations. D.C. Code §§ 5-414, 5-420. Rose Lees Hardy Home & School Asso. v. District of Columbia Bd. of Zoning Adjustment, 343 A.2d 564, 1975 D.C. App. LEXIS 238 (1975).

The District of Columbia Board of Zoning Adjustment, being a creature of statute with discretionary and fact-finding authority, may not exercise its discretion in an arbitrary manner but rather is subject to statutory and regulatory directives and guidelines. D.C. Code § 5-414. Rose Lees Hardy Home & School Asso. v. District of Columbia Bd. of Zoning Adjustment, 324 A.2d 701, 1974 D.C. App. LEXIS 261 (1974).

District of Columbia Board of Zoning Adjustment may exercise its discretion to grant a special exception only when in its judgment the exception sought is in accord with the purpose of the zoning regulations. D.C. Code § 5-414. Rose Lees Hardy Home & School Asso. v. District of Columbia Bd. of Zoning Adjustment, 324 A.2d 701, 1974 D.C. App. LEXIS 261 (1974).

Decision of board of zoning adjustment on application for special exception must not be controlled by head count as in a political elec-

tion, but by evidence adduced as it relates to requirements for special exception. D.C. Code §§ 1-1501 et seq., 1-1510, 5-414. Dietrich v. District of Columbia Board of Zoning Adjustment, 320 A.2d 282, 1974 D.C. App. LEXIS 217 (1974).

Consistency with plan for capital.

Proposed planned unit development adding new wing to apartment building that was listed as historic landmark and that was located on unique site in ward three abutting national zoo and tributary valley of park was not inconsistent with comprehensive plan for national capital, by virtue of provisions in ward three element that mandated protection of overall low-to-moderate density character of ward; land use element of plan unambiguously permitted high density apartment buildings at location of development, and ward three element encouraged zoning flexibility for provision of new housing. D.C. Code 1981, § 5-414. Cathedral Park Condo. Comm. v. District of Columbia Zoning Comm'n, 743 A.2d 1231, 2000 D.C. App. LEXIS 9 (2000).

Evidence in proceedings on application for zoning amendment to change classification of vacant parcel of land supported conclusion that change from classification providing for one-family detached dwellings with minimum lot area of 5,000 square feet to classification permitting development of row dwellings within minimum area of 2,000 square feet would be appropriate for the area and compatible with comprehensive zoning plan in District of Columbia; change in classification would not be reversed on theory that Zoning Commission had no authority to make change without making preliminary finding that substantial change in character had occurred in surrounding neighborhood which necessitated zoning amendment. D.C. Code § 5-414. Rock Creek East Neighborhood League, Inc. v. District of Columbia Zoning Com., 388 A.2d 450, 1978 D.C. App. LEXIS 470 (1978).

District of Columbia Zoning Commission must accord substantial weight and respect to the National Capital Planning Commission's statutorily authorized commentary on proposed maps, regulations and amendments to the comprehensive plan; the record must contain a strong basis for resort to a different interpretation. D.C. Code §§ 1-1002, 1-1004(a), 1-121, 1-126, 1-1001 et seq., 1-1002(a)(4), (a)(4)(D, F), (e), 1-1008(a), 1-1510, 5-413, 5-414; U.S. Const. art. 1, § 8, cl. 17. Capitol Hill Restoration Soc. v. Zoning Com., 380 A.2d 174, 1977 D.C. App. LEXIS 278 (1977).

Rezoning of 2.2-acre vacant parcel to permit more intensive development would not be overturned where in the area involved the comprehensive plan called for predominantly residential development density of 60 to 120 dwelling

units per acre, area residences were largely single-family dwellings, subway terminal had considerable surplus capacity and applicant imposed on tract a covenant limiting maximum height of any building to 65 feet to protect surrounding historic landmarks. D.C. Code § 5-414. Capitol Hill Restoration Soc. v. Zoning Com., 380 A.2d 174, 1977 D.C. App. LEXIS 278 (1977).

Environmental impact.

District of Columbia Zoning Commission and the National Capital Planning Commission are not required to prepare an environmental impact statement in connection with their considerations of application for redevelopment of apartment complex either under provision of District Zoning Regulations governing planned unit developments or provisions governing amendments of zoning maps and zoning regulations. National Environmental Policy Act of 1969, §§ 1 et seq., 101, 102, 42 U.S.C. §§ 4321 et seq., 4331, 4332; District of Columbia Self-Government and Governmental Reorganization Act, §§ 101 et seq., 102(a), 203, 423, 492, 87 Stat. 774; D.C. Code §§ 5-412 et seq., 5-417. McLean Gardens Residents, Asso. v. National Capital Planning Com., 390 F. Supp. 165, 1974 U.S. Dist. LEXIS 8239 (1974).

Although the District of Columbia Zoning Commission and National Capital Planning Commission are not required to prepare an environmental impact statement in connection with applications under the District's zoning regulations for planned unit development or for amendment of zoning maps and zoning regulations, the environmental policies delineated in the National Environmental Policy Act should find expression in the planning and zoning process in the District; proper avenue for implementation of the purposes of the NEPA is in the planning operations of the National Capital Planning Commission, particularly in formulation of the Comprehensive Plan. National Environmental Policy Act of 1969, §§ 1 et seq., 102, 42 U.S.C. §§ 4321 et seq., 4332; District of Columbia Self-Government and Governmental Reorganization Act, § 101 et seq., 87 Stat. 774; National Capital Planning Act of 1952, § 4(a), 40 U.S.C. § 71c(a); D.C. Code § 1-1004(a). McLean Gardens Residents, Asso. v. National Capital Planning Com., 390 F. Supp. 165, 1974 U.S. Dist. LEXIS 8239 (1974).

National Environmental Policy Act was not intended to reach zoning operations on the local governmental level. National Environmental Policy Act of 1969, §§ 1 et seq., 102, 42 U.S.C. §§ 4321 et seq., 4332. McLean Gardens Residents, Asso. v. National Capital Planning Com., 390 F. Supp. 165, 1974 U.S. Dist. LEXIS 8239 (1974).

When passing on application for planned unit developments or amendments to zoning map

and regulations the District of Columbia Zoning Commission is not free to ignore environmental policy; where the potential environmental effects of the Commission's decision are substantial, it must at least consider the environmental issue to fulfill its public interest mandate. District of Columbia Self-Government and Governmental Reorganization Act, §§ 203, 423, 492, 87 Stat. 774. McLean Gardens Residents, Asso. v. National Capital Planning Com., 390 F. Supp. 165, 1974 U.S. Dist. LEXIS 8239 (1974).

Inasmuch as District of Columbia zoning commission which down-zoned substantial portion of downtown area was not a federal agency, no environmental impact statement was required. D.C. Code § 1-1501 et seq.; National Environmental Policy Act of 1969, § 102(2)(C), 42 U.S.C. § 4332(2)(C). Ruppert v. Washington, 366 F. Supp. 686, 1973 U.S. Dist. LEXIS 12806 (1973), affirmed without opinion by 543 F.2d 416, 177 U.S. App. D.C. 269 (1976), affirmed without opinion by 543 F.2d 417, 177 U.S. App. D.C. 270 (1976).

Findings and reasons for decision.

Inasmuch as judicial review of action of District of Columbia zoning commission in down-zoning area of city would be facilitated by a statement of the commission's reasons, court would direct commission to state its reasons for the down-zoning order, and to provide statement of the environmental factors considered persuasive of the action taken. National Environmental Policy Act of 1969, § 2 et seq., 42 U.S.C. § 4321 et seq. Ruppert v. Washington, 366 F. Supp. 683, 1973 U.S. Dist. LEXIS 14560 (1973).

Findings concerning low density development requirement for developments adjacent to landmark parks were required, thus warranting remand to zoning commission, in case challenging commission's decision to approve construction, and associated rezoning, of planned unit development adding new wing to apartment building that was listed as historic landmark and that was located on unique site in ward three abutting national zoo and tributary valley of park. D.C. Code 1981, § 5-414. Cathedral Park Condo. Comm. v. District of Columbia Zoning Comm'n, 743 A.2d 1231, 2000 D.C. App. LEXIS 9 (2000).

Further findings and conclusions on question of consistency of proposed planned unit development with green space provisions of comprehensive plan for national capital were required, thus warranting remand to zoning commission, in case challenging commission's decision to approve construction, and associated rezoning, of planned unit development adding new wing to apartment building that was listed as historic landmark and that was located on unique site in ward three abutting national zoo and

tributary valley of park. D.C. Code 1981, § 5-414. Cathedral Park Condo. Comm. v. District of Columbia Zoning Comm'n, 743 A.2d 1231, 2000 D.C. App. LEXIS 9 (2000).

Remand was required for explanation by District of Columbia Zoning Commission of its conclusion that planned unit development was consistent with District's comprehensive plan; simple conclusory statement without explanation was insufficient where it appeared, at least facially, that development was inconsistent with plan. D.C. Code 1981, § 5-414. Blagden Alley Ass'n v. District of Columbia Zoning Com., 590 A.2d 139, 1991 D.C. App. LEXIS 103 (1991).

Remand was required for explanation of how approved planned unit development was consistent with District of Columbia Zoning Commission regulations; approval of application containing only off-site amenities appeared, at least facially, to run afoul of regulations and, though Commission was free to regulate through contested case proceedings, it was required to set forth basis for its decision with such clarity as to be understandable. Blagden Alley Ass'n v. District of Columbia Zoning Com., 590 A.2d 139, 1991 D.C. App. LEXIS 103 (1991).

Findings of Board of Zoning Adjustment on objections to granting exception to permit private boys' high school would not be inferred from other findings that Board did make. D.C. Code §§ 1-1509, 5-414. Dietrich v. District of Columbia Board of Zoning Adjustment, 293 A.2d 470, 1972 D.C. App. LEXIS 222 (1972).

Order of District of Columbia Board of Zoning Adjustment merely summarizing testimony, in hearing on application for special exception to permit use of property for boys' high school, and containing conclusions simply echoing statutory language authorizing grant of a variance was insufficient to comply with statutory requirement that decision be accompanied by findings of fact consisting of a concise statement of conclusions upon each contested issue of fact. D.C. Code §§ 1-1509, 5-414. Dietrich v. District of Columbia Board of Zoning Adjustment, 293 A.2d 470, 1972 D.C. App. LEXIS 222 (1972).

Order of District of Columbia Board of Zoning Adjustment upon application for special exception in contested case must contain demonstration of a rational connection between facts found and choice made, and generalized, conclusory or incomplete findings are not sufficient; findings must support end result in a discernible manner, and result reached must be supported by subsidiary findings of basic facts on all material issues; there must be findings of each material fact with full reasons given to support each finding. D.C. Code §§ 1-1509, 5-414. Dietrich v. District of Columbia Board of

Zoning Adjustment, 293 A.2d 470, 1972 D.C. App. LEXIS 222 (1972).

Where issues on which Board of Zoning Adjustment failed to make express findings of fact, in ruling on application for exception to permit use of property for a private boys' high school, an application which aroused substantial neighborhood opposition, were within conditions to be considered under zoning regulations before exception could be granted, the issues were "material," and order granting exception would be vacated and case remanded for further proceedings. D.C. Code §§ 1-1509, 5-414. Dietrich v. District of Columbia Board of Zoning Adjustment, 293 A.2d 470, 1972 D.C. App. LEXIS 222 (1972).

Hearings generally.

That three Board of Zoning Adjustment members of District of Columbia, two of whom were subordinate government employees, were secretly informed that highly placed persons in government wanted Board to grant foreign government's application for exception to erect embassy building in residential zone denied fair hearing, rendered favorable decision void and required rehearing by new board created for that purpose. U.S. Const. art. 1, § 8; D.C. Code 1961, §§ 1-201, 1-202, 1-216, 1-218, 5-412, 5-413, 5-414, 5-420. Jarrott v. Scrivener, 225 F. Supp. 827, 1964 U.S. Dist. LEXIS 7576 (D.D.C.1964).

There was ample evidence of record from which zoning commission could find that rezoning sought by supermarket to facilitate expansion would further specific aims of zoning statute. D.C. Code § 5-414. Citizens Asso. of Georgetown, Inc. v. District of Columbia Zoning Com., 402 A.2d 36, 1979 D.C. App. LEXIS 364 (1979).

Each member of Zoning Commission was not required to have heard all the evidence presented in earlier cases involving the same property; attendance by Commissioners at public hearing and participation in decision making involving instant rezoning application was all that was required. D.C. Code § 5-414. Capitol Hill Restoration Soc. v. Zoning Com., 380 A.2d 174, 1977 D.C. App. LEXIS 278 (1977).

Refusal of Zoning Commission of District of Columbia to consider covenant whereby developer limited maximum height of any building to 65 feet, rather than the 90 feet allowed by zoning code, was error; Commission would not have been engaged in so-called contract zoning by considering such a covenant in its rezoning decision; however, error did not require reversal since the same result would have been reached had the Commission properly interpreted the law. D.C. Code § 5-414. Capitol Hill Restoration Soc. v. Zoning Com., 380 A.2d 174, 1977 D.C. App. LEXIS 278 (1977).

The District of Columbia Zoning Commission may not adjudicate legal rights, duties or privileges of specific parties under pretense of legislative action. D.C. Code §§ 5-413 to 5-415. Dupont Circle Citizen's Asso. v. District of Columbia Zoning Com., 343 A.2d 296, 1975 D.C. App. LEXIS 433 (1975).

Although District of Columbia Board of Zoning Adjustment may not have been required to consider impact on existing public and private schools in passing on request by religious organization for special exception to allow construction of private school for kindergarten and elementary school age children in residential area, the Board committed procedural error, requiring remand, in not implementing its preliminary decision to seek "comments" from Board of Education respecting possible adverse impact on existing schools and in relying on information contained in letter from Superintendent of Schools as to such impact without serving such letter on the parties. D.C. Code §§ 1-1501 et seq., 1-1509, 5-414. Rose Lees Hardy Home & School Asso. v. District of Columbia Bd. of Zoning Adjustment, 324 A.2d 701, 1974 D.C. App. LEXIS 261 (1974).

In general.

District of Columbia Zoning Commission had ample statutory authority for action taken in fixing minimum width and sizes of residential lots. D.C. Code 1951, §§ 5-413, 5-414. Salyer v. McLaughlin, 240 F.2d 891, 1957 U.S. App. LEXIS 3425 (C.A.D.C. 1957).

Where following amendment of District of Columbia zoning map but prior to appellate review, zoning laws were amended to require that maps and amendments not be inconsistent with comprehensive plan for the National Capital, the amended law was to be applied and the amendment examined for conformity to the comprehensive plan. D.C. Code §§ 1-1510, 5-414, 5-415, 11-707(a), 11-722. Capitol Hill Restoration Soc. v. Zoning Com., 380 A.2d 174, 1977 D.C. App. LEXIS 278 (1977).

Injunction.

Court had no right to substitute its judgment for that of District of Columbia Zoning Commission, and where nothing appeared to indicate that Commission's action in fixing minimum widths and sizes of residential lots was unreasonable or arbitrary, court could not enjoin enforcement of regulation. D.C. Code 1951, §§ 5-401 to 5-430, 5-413, 5-414, 5-417. Salyer v. McLaughlin, 240 F.2d 891, 1957 U.S. App. LEXIS 3425 (C.A.D.C. 1957).

Where adjoining property owners had not been parties to suit to enjoin zoning commission from carrying into effect a zoning order and zoning commission had failed to appeal from final decree enjoining enforcement of order, property owners were entitled as a matter

of right to intervene in the proceeding, since they would otherwise be bound by the decree. D.C. Code 1940, §§ 5-414, 5-422; Fed. Rules Civ. Proc. rule 24 (a), 18 U.S.C. Wolpe v. Poretsky, 144 F.2d 505, 1944 U.S. App. LEXIS 2867 (1944).

A suit to enjoin zoning commission from carrying into effect a zoning order is not an appeal on the merits of the issues presented to the commission, and hence court should not substitute its judgment for that of the commission even for reasons which appear most persuasive. D.C. Code 1940, §§ 5-414, 5-422. Wolpe v. Poretsky, 144 F.2d 505, 1944 U.S. App. LEXIS 2867 (1944).

In suit to enjoin members of zoning commission from carrying into effect a zoning order, zoning commission, in absence of intervention by adjoining property owners, sufficiently represented their interests so that a decree setting aside zoning order would be binding upon them. D.C. Code 1940, §§ 5-414, 5-422. Wolpe v. Poretsky, 144 F.2d 505, 1944 U.S. App. LEXIS 2867 (1944).

Maps and regulations generally.

Adoption of comprehensive plan and promulgation of regulations, accompanied by city-wide map, may all be single act, providing entire city is zoned on comprehensive basis. D.C. Code 1961, § 5-414. Capital Properties, Inc. v. Zoning Com. of District of Columbia, 229 F. Supp. 255, 1964 U.S. Dist. LEXIS 7042 (D.D.C. 1964).

The Zoning Commission had the authority to approve developer's application for a planned unit development (PUD) and a related zoning map amendment simultaneously to conditionally removing the property from a commercial overlay district, without prior Board of Zoning Adjustment (BZA) approval, though such approval would otherwise have been required; statutes granted the Commission a broad general authority over zoning matters, the Commission was entrusted with reviewing and approving PUD applications, and the zoning regulations did not prohibit the use of PUDs in conjunction with approval of a zoning map amendment to remove property from a neighborhood commercial overlay district without BZA approval. Wisconsin-Newark Neighborhood Coalition v. D.C. Zoning Comm'n, 33 A.3d 382, 2011 D.C. App. LEXIS 691 (2011).

Under test that comprehensive plan for the National Capital means plan to be adopted pursuant to Home Rule Act, and that until plan is adopted, compliance with Act requires solely that Zoning Commission zone on a uniform and comprehensive basis, proposed building which complied with C-2-A zoning for the area was valid. D.C. Code § 5-414. American University Park Citizens Asso. v. Burka, 400 A.2d 737, 1979 D.C. App. LEXIS 319 (1979).

Only comprehensive plan with which statute governing purposes of zoning regulations requires that zoning must be consistent is the plan to be adopted pursuant to procedures of the District of Columbia's Home Rule Act: D.C. Code §§ 1-1002(a)(4)(D), 1-1501 et seq., 5-414. *Citizens Asso. of Georgetown v. Zoning Com. of District of Columbia*, 392 A.2d 1027, 1978 D.C. App. LEXIS 328 (1978).

Presumptions.

Actions of District of Columbia Zoning Commission are entitled to presumption of validity; however, the Commission must put forward or the court must be otherwise able to discern some basis in fact and law to justify Commission's action as consistent with reasonableness. D.C. Code § 5-413. *Citizens Ass'n of Georgetown, Inc. v. Zoning Com. of District of Columbia*, 477 F.2d 402, 1973 U.S. App. LEXIS 11831 (C.A.D.C. 1973).

Scope of review.

Ordinarily, review by court of decision of Board of Zoning Adjustment of District of Columbia would be limited to Board's record of proceedings before it, and court would not be permitted to hear evidence *dehors* that record. D.C. Code 1961, §§ 1-216, 1-218, 5-412, 5-413, 5-414, 5-420. *Jarrott v. Scrivener*, 225 F. Supp. 827, 1964 U.S. Dist. LEXIS 7576 (D.D.C.1964).

Where integrity of decision of Board of Zoning Adjustment of District of Columbia was questioned, court could go outside Board's record and receive independent evidence. D.C. Code 1961, §§ 1-216, 1-218, 5-412, 5-413, 5-414, 5-420. *Jarrott v. Scrivener*, 225 F. Supp. 827, 1964 U.S. Dist. LEXIS 7576 (D.D.C.1964).

Standard of review.

Generally, correctness or incorrectness of decision of Board of Zoning Adjustment of District of Columbia is not one for judicial review if there is substantial evidence to support it and parties have been accorded due process of law. D.C. Code 1961, §§ 1-216, 1-218, 5-412, 5-413, 5-414, 5-420. *Jarrott v. Scrivener*, 225 F. Supp. 827, 1964 U.S. Dist. LEXIS 7576 (D.D.C.1964).

On review of order of board of zoning adjustment, Court of Appeals must determine whether findings made are supported and in accordance with reliable, probative and substantial evidence in the whole administrative record and whether conclusions of board flow rationally from these findings. D.C. Code §§ 1-1501 et seq., 1-1510, 5-414. *Dietrich v. District of Columbia Board of Zoning Adjustment*, 320 A.2d 282, 1974 D.C. App. LEXIS 217 (1974).

Sufficiency of evidence.

Evidence held to sustain chancellor's finding that zoning of property as restricted area district in District of Columbia, which precluded erection of apartment house thereon, was arbi-

trary. *Hazen v. Hawley*, 86 F.2d 217, 1936 U.S. App. LEXIS 3697 (1936).

Decision of District of Columbia zoning commission down-zoning a substantial portion of downtown area had a substantial relationship to the general welfare and was supported by adequate reasons. D.C. Code § 1-1501 et seq.; National Environmental Policy Act of 1969, § 102(2)(C), 42 U.S.C. § 4332(2)(C). *Ruppert v. Washington*, 366 F. Supp. 686, 1973 U.S. Dist. LEXIS 12806 (1973), affirmed without opinion by 543 F.2d 416, 177 U.S. App. D.C. 269 (1976), affirmed without opinion by 543 F.2d 417, 177 U.S. App. D.C. 270 (1976).

Evidence was sufficient to support determination by Zoning Commission that the rezoning of developer's property in conjunction with Commission's approval of developer's application for a planned unit development (PUD) was not inconsistent with the Comprehensive Plan; developer and office of planning testified that the proposed project was consistent with the Plan's major elements, Plan designated the area as low density commercial and moderate density commercial, designation was consistent with the definition of the new zoning district, and, though the project contained an apartment building, the Plan permitted housing in commercial areas. *Wisconsin-Newark Neighborhood Coalition v. D.C. Zoning Comm'n*, 33 A.3d 382, 2011 D.C. App. LEXIS 691 (2011).

Evidence including testimony from park superintendent and representative from national zoo supported zoning commission's finding that, to the extent a green buffer for landmark parks was necessary, the need would be met by a proposed tree preservation plan, in case challenging commission's decision to approve construction, and associated rezoning, of planned unit development adding new wing to apartment building that was listed as historic landmark and that was located on unique site in ward three abutting national zoo and tributary valley of park. D.C. Code 1981, § 5-414. *Cathedral Park Condo. Comm. v. District of Columbia Zoning Comm'n*, 743 A.2d 1231, 2000 D.C. App. LEXIS 9 (2000).

Evidence including architects' testimony supported zoning commission's finding that proposed planned unit development was consistent with height and scale provisions of comprehensive plan for national capital, in case challenging commission's decision to approve construction, and associated rezoning, of planned unit development adding new wing to apartment building that was listed as historic landmark and that was located on unique site in ward three abutting national zoo and tributary valley of park. D.C. Code 1981, § 5-414. *Cathedral Park Condo. Comm. v. District of Columbia Zoning Comm'n*, 743 A.2d 1231, 2000 D.C. App. LEXIS 9 (2000).

§ 6-641.03 HOUSING & BUILDING RESTRICTIONS & REGULATIONS

Evidence including tree preservation plan and water runoff controls supported zoning commission's finding that proposed planned unit development would provide an environmental "net gain" for ward three, in case challenging commission's decision to approve construction, and associated rezoning, of planned unit development adding new wing to apartment building that was listed as historic landmark and that was located on unique site in ward three abutting national zoo and tributary valley of park. D.C. Code 1981, § 5-414. Cathedral Park Condo. Comm. v. District of Columbia Zoning Comm'n, 743 A.2d 1231, 2000 D.C. App. LEXIS 9 (2000).

Evidence that there had been substantial changes in the neighborhood since adoption of

comprehensive zoning plan and that zoning change to permit townhouse development would promote orderly development of the property and would be in harmony with the comprehensive plan was sufficient showing of substantial change to sustain rezoning. Palisades Citizens Assoc., Inc. v. District of Columbia Zoning Com., 368 A.2d 1143, 1977 D.C. App. LEXIS 413 (1977).

Evidence established that requirements had been met for special exception to permit private high school to be located in building situated in medium density apartment house zone. D.C. Code §§ 1-1501 et seq., 1-1510, 5-414. Dietrich v. District of Columbia Board of Zoning Adjustment, 320 A.2d 282, 1974 D.C. App. LEXIS 217 (1974).

§ 6-641.03. Zoning regulations — Existing regulations continued; public hearing on amendments required; notice.

The regulations prior to June 20, 1938, adopted by the Zoning Commission under the authority of § 6-621.01 and in force on June 20, 1938, including the maps which at said date accompany and are a part of such regulations, shall be deemed to have been made and adopted and in force under this subchapter and subchapter V and shall be and continue in force and effect until and as they may be amended by the Zoning Commission as authorized by said this subchapter and subchapter V. The Zoning Commission may from time to time amend the regulations or any of them or the maps or any of them. Before putting into effect any amendment or amendments of said regulations, or of said map or maps, the Zoning Commission shall hold a public hearing thereon and provide notice of the hearing in accordance with the requirements of subchapter I of Chapter 5 of Title 2. Such published notice shall include a general summary of the proposed amendment or amendments of the regulation or regulations and the boundaries of the territory or territories included in the amendment or amendments of the map or maps, and the time and place of the hearing. The Zoning Commission shall give such additional notice of such hearing as it shall deem feasible and practicable. At such hearing it shall afford any person present a reasonable opportunity to be heard. Such public hearing may be adjourned from time to time and if the time and place of the adjourned meeting be publicly announced when the adjournment is had, no further notice of such adjourned meeting need be published.

(June 20, 1938, 52 Stat. 798, ch. 534, § 3; Apr. 27, 1999, D.C. Law 12-275, § 5, 46 DCR 1441.)

Cross references. — Parking facilities, establishment, see § 50-2605.

Public parking authority, parking districts, see § 50-2511.

Section references. — This section is referred to in § 6-651.07.

Prior Codifications. — 1981 Ed., § 5-415.

1973 Ed., § 5-415.

Legislative history of Law 12-275. — Law 12-275, the "Comprehensive Plan Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-99, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on Decem-

ber 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-609 and transmitted to both Houses of Congress for its review. D.C. Law 12-275 became effective on April 27, 1999.

Editor's notes. — Zoning Review Task Force: See Historical and Statutory Notes following § 6-641.01.

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Zoning commission's approval of preliminary application for planned unit development conditioned on rezoning of a section of the planned unit development area was not, in effect, a final rezoning. *Dupont Circle Citizens Asso. v. District of Columbia Zoning Com.*, 426 A.2d 327, 1981 D.C. App. LEXIS 211 (1981).

It was not necessary to show mistake in previous zoning in order to permit change in zoning, on the grounds of substantial change, so as to permit townhouse development. *Palisades Citizens Assoc., Inc. v. District of Columbia Zoning Com.*, 368 A.2d 1143, 1977 D.C. App. LEXIS 413 (1977).

Since the act of zoning is primarily legislative and is presumed to be valid, original classification of property of petitioner who desired to change zoning classification was valid. *W. C. & A. N. Miller Dev. Co. v. District of Columbia Zoning Com.*, 340 A.2d 420, 1975 D.C. App. LEXIS 372 (1975).

Once a single parcel of land is rezoned it necessarily affects the surrounding area because a use previously prohibited in the area is now allowed, and it also invites other area property owners to apply for similar amendments, so that rezoning decision, while affecting individual landowner who proposes amendment of zoning ordinance, is basically one of policy which takes into consideration the needs of the area as a whole. *W. C. & A. N. Miller Dev. Co. v. District of Columbia Zoning Com.*, 340 A.2d 420, 1975 D.C. App. LEXIS 372 (1975).

Sole authority for any amendment of zoning regulations relating to parking was in zoning

commission, not Board of Zoning Adjustment. D.C. Code §§ 5-413, 5-420. *Citizens Asso. of Georgetown, Inc. v. District of Columbia Board of Zoning Adjustment*, 337 A.2d 495, 1975 D.C. App. LEXIS 377 (1975).

Findings and determination.

Zoning commission of the District of Columbia was not required to state its reasons nor make findings of fact in denying application for change in zoning classification. D.C. Code § 5-412. *Shenk v. Zoning Com. of District of Columbia*, 440 F.2d 295, 1971 U.S. App. LEXIS 11299 (C.A.D.C. 1971).

Property owner who had petitioned for rezoning of property located in restricted area in which erection of apartment houses was forbidden for rezoning of property to specified zoning district in which erection of apartment houses was permitted held entitled to determination as to whether continued use restriction of existing zoning was reasonable. *Hazen v. Hawley*, 86 F.2d 217, 1936 U.S. App. LEXIS 3697 (1936).

Inasmuch as judicial review of action of District of Columbia zoning commission in down-zoning area of city would be facilitated by a statement of the commission's reasons, court would direct commission to state its reasons for the down-zoning order, and to provide a statement of the environmental factors considered persuasive of the action taken. *National Environmental Policy Act of 1969*, § 2 et seq., 42 U.S.C. § 4321 et seq. *Ruppert v. Washington*, 366 F. Supp. 683, 1973 U.S. Dist. LEXIS 14560 (1973).

Action of zoning commission in approving zoning change on property to permit townhouse development did not constitute spot zoning. *Palisades Citizens Assoc., Inc. v. District of Columbia Zoning Com.*, 368 A.2d 1143, 1977 D.C. App. LEXIS 413 (1977).

Hearings.

— Admissibility of evidence, hearings.

In suit by property owner to require rezoning of property so as to permit erection of apartment, admission of evidence of doctor who was shown pictures of projected apartment which was planned to be erected on property, and who testified as to effect erection of such an apartment, or modern apartment, would have on public health of territory adjacent to property, held not prejudicial error. *Hazen v.*

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Hawley, 86 F.2d 217, 1936 U.S. App. LEXIS 3697 (1936).

In property owner's suit to require rezoning of property so as to permit erection of an apartment, admission of pencil sketches of projected apartment for property to prove that sketches were before zoning commission upon hearing of petition for rezoning held not prejudicial error. *Hazen v. Hawley*, 86 F.2d 217, 1936 U.S. App. LEXIS 3697 (1936).

— Ex parte communications, hearings.

Landowners objecting to rezoning of adjoining property were not afforded their statutory right to a reasonable opportunity to be heard where only two of the five members of the zoning commission attended the public hearing to hear protests against the rezoning, and concurrence of a majority of the whole commission was required by statute to change zoning. D.C. Code §§ 5-412, 5-415, 5-416. *Allen v. Zoning Com. of District of Columbia*, 449 F.2d 1100, 1971 U.S. App. LEXIS 9056 (C.A.D.C. 1971).

Contacts of District of Columbia zoning commission with federal agencies did not defeat validity of down-zoning order of the commission on theory that the commission considered information ex parte. D.C. Code § 1-1501 et seq.; National Environmental Policy Act of 1969, § 102(2)(C), 42 U.S.C. § 4332(2)(C). *Ruppert v. Washington*, 366 F. Supp. 686, 1973 U.S. Dist. LEXIS 12806 (1973), affirmed without opinion by 543 F.2d 416, 177 U.S. App. D.C. 269 (1976), affirmed without opinion by 543 F.2d 417, 177 U.S. App. D.C. 270 (1976).

Ex parte communications between Zoning Commission staff and various developers during rule-making proceeding relating to Georgetown waterfront did not violate requirements of District of Columbia Administrative Procedure Act or due process, and did not deny a fair hearing. D.C. Code §§ 1-1501 et seq., 5-413 et seq. *Citizens Asso. of Georgetown v. Zoning Com. of District of Columbia*, 392 A.2d 1027, 1978 D.C. App. LEXIS 328 (1978).

— In general.

A purpose of zoning hearings is to explore subject such as limitations with respect to floor area ratio or limitation of lot occupancy in connection with proposed changes in zoning regulations. D.C. Code 1951, § 5-415. *Aquino v. Tobriner*, 298 F.2d 674, 1961 U.S. App. LEXIS 2960 (C.A.D.C. 1961).

Validity of proceedings to change zoning regulations held not affected by motive of commission. Zoning Act March 1, 1920, §§ 4, 5, 41 Stat. 500. *Larrabee v. Bell*, 10 F.2d 986, 1926 U.S. App. LEXIS 2314 (1926).

Proceedings before District of Columbia zoning commission are quasi-legislative in character, not adjudicative in nature, and strictures of the District of Columbia Administrative Proce-

dures Act and full range of due process protections necessary to an adversary adjudication are not applicable. D.C. Code § 1-1501 et seq.; National Environmental Policy Act of 1969, § 102(2)(C), 42 U.S.C. § 4332(2)(C). *Ruppert v. Washington*, 366 F. Supp. 686, 1973 U.S. Dist. LEXIS 12806 (1973), affirmed without opinion by 543 F.2d 416, 177 U.S. App. D.C. 269 (1976), affirmed without opinion by 543 F.2d 417, 177 U.S. App. D.C. 270 (1976).

In performance of adjudicatory function by Board of Zoning Adjustment of District of Columbia, parties whose rights are involved are entitled to same fairness, impartiality and independence of judgment as are expected in court of law. D.C. Code 1961, §§ 1-216, 1-218, 5-412, 5-413, 5-414, 5-420. *Jarrott v. Scrivener*, 225 F. Supp. 827, 1964 U.S. Dist. LEXIS 7576 (D.D.C.1964).

Restraints of District of Columbia Administrative Procedure Act and full range of due process protections necessary to an adversary adjudication were not applicable to rulemaking proceedings before the Zoning Commission. D.C. Code §§ 1-1501 et seq., 5-413 et seq. *Citizens Asso. of Georgetown v. Zoning Com. of District of Columbia*, 392 A.2d 1027, 1978 D.C. App. LEXIS 328 (1978).

Zoning Commission properly proceeded by rulemaking in preparing new zoning proposals for Georgetown waterfront. D.C. Code § 5-413 et seq. *Citizens Asso. of Georgetown v. Zoning Com. of District of Columbia*, 392 A.2d 1027, 1978 D.C. App. LEXIS 328 (1978).

The District of Columbia Zoning Commission may not adjudicate legal rights, duties or privileges of specific parties under pretense of legislative action. D.C. Code §§ 5-413 to 5-415. *Dupont Circle Citizen's Asso. v. District of Columbia Zoning Com.*, 343 A.2d 296, 1975 D.C. App. LEXIS 433 (1975).

— Necessity and sufficiency, hearings.

Where zoning commission rejected proposed amendment to zoning regulation upgrading area as stated in notice of public hearing thereon and adopted a zoning amendment downgrading area, participation by property owners in a subsequent hearing on a petition filed by them to change zoning for area back up to a higher grade did not preclude them from attacking validity of amendment. D.C. Code 1951, § 5-415. *Castle v. McLaughlin*, 270 F.2d 448, 1959 U.S. App. LEXIS 3586 (C.A.D.C. 1959).

Under statute requiring that before a zoning amendment could be put into effect a public hearing must be held thereon, purported zoning amendment downgrading area was invalid for lack of required notice and hearing when proposed amendment in notice of public hearing amounted to a minor upgrading of area and only hearing held relating to proposed amend-

ment resulted in rejection of amendment, and hearing on rejected amendment could not be treated as acceptable substitute since proposal was so fundamentally changed that a public hearing was required before amendment embodying change could validly be adopted. D.C. Code 1951, § 5-415. *Castle v. McLaughlin*, 270 F.2d 448, 1959 U.S. App. LEXIS 3586 (C.A.D.C. 1959).

Where notice of public hearing on proposed amendment to upgrade an area was rejected by zoning commission, before another proposal could be adopted a notice and hearing relating to it was required under statute providing that before an amendment is put into effect a public hearing shall be held therefrom. D.C. Code 1951, § 5-415. *Castle v. McLaughlin*, 270 F.2d 448, 1959 U.S. App. LEXIS 3586 (C.A.D.C. 1959).

Hearings of District of Columbia zoning commission concerning change of zoning were not invalid under statute because plaintiff's property was considered with a large number of other tracts. D.C. Code 1929, T. 25, § 521 et seq. *Garrity v. District of Columbia*, 86 F.2d 207, 1936 U.S. App. LEXIS 3696 (1936).

Where there was a quorum of the zoning commission at the public hearings, where decision to grant application for change in zoning was made unanimously by the entire five member commission, where the order itself, containing the findings of fact and conclusions of law, was later signed by three members, two of whom had been present at the hearings, and where opportunity was granted to objectors to file exceptions and present argument to majority of those who rendered the order, the provisions of the Administrative Procedure Act were sufficiently complied with. D.C. Code § 1-1501 et seq. *Palisades Citizens Assoc., Inc. v. District of Columbia Zoning Com.*, 368 A.2d 1143, 1977 D.C. App. LEXIS 413 (1977).

Hearing upon property owner's proposed zoning map amendment before its denial was not constitutionally required. *W. C. & A. N. Miller Dev. Co. v. District of Columbia Zoning Com.*, 340 A.2d 420, 1975 D.C. App. LEXIS 372 (1975).

— Notice, hearings.

Zoning classification, excluding high-rise construction, was not invalidated by fact that classification adopted was not proposed in notice for hearing, while high-rise classification was proposed, where it did not appear that subject of the change was not aired at hearing, zoning commission's reason for adopting exclusionary classification was unlikelihood that high-rise construction was then needed, and objecting party's predecessor, who owned property at time of zoning, did not object over period of years. D.C. Code § 5-415. *Gerstenfeld v. Jett*,

374 F.2d 333, 1967 U.S. App. LEXIS 7504 (C.A.D.C. 1967).

Statutory requirement that District of Columbia Commissioners give such notice, in addition to notice published in newspaper, of zoning hearing as Commission deems feasible and practical is not mandatory, but whether and what kind of added notice will be given in particular case is in discretion of Commission. D.C. Code 1951, § 5-415. *Aquino v. Tobriner*, 298 F.2d 674, 1961 U.S. App. LEXIS 2960 (C.A.D.C. 1961).

That substantial changes were made in zoning proposals originally put forward did not invalidate changes in regulations rezoning as "R-4," wherein only certain types of residential construction were permitted, lots formerly zoned "first commercial", where rezoning was purpose of hearing, even though original proposals did not require limitation on floor area ratio or lot occupancy and rezoning as adopted did. D.C. Code 1951, § 5-415. *Aquino v. Tobriner*, 298 F.2d 674, 1961 U.S. App. LEXIS 2960 (C.A.D.C. 1961).

Zoning Commission's failure to give additional notice beyond newspaper publication of notice of hearing on zoning regulation changes was not abuse of discretion in absence of showing that giving of additional notice was feasible and practical, particularly in view of fact that hearing was attended by considerable publicity. D.C. Code 1951, § 5-415. *Aquino v. Tobriner*, 298 F.2d 674, 1961 U.S. App. LEXIS 2960 (C.A.D.C. 1961).

Under statute providing that before zoning amendment can be put into effect a public hearing must be held thereon, landowners and public must be told as clearly and fully as is reasonably possible what is proposed by zoning authorities, and if several alternatives are to be considered for a particular area, all should be mentioned as possibilities. D.C. Code 1951, § 5-415. *Castle v. McLaughlin*, 270 F.2d 448, 1959 U.S. App. LEXIS 3586 (C.A.D.C. 1959).

Where notice of a public hearing was given of a proposed amendment to zoning regulations to upgrade a certain area and on hearing zoning commission rejected proposal, a different amendment of zoning regulation downgrading area did not acquire a belated validity by reason of a hearing held after it became effective on a petition filed by property owners to change zoning from classification to which it had been downgraded to a higher zoning grade. D.C. Code 1951, § 5-415. *Castle v. McLaughlin*, 270 F.2d 448, 1959 U.S. App. LEXIS 3586 (C.A.D.C. 1959).

Where Zoning Commission failed to meet its self-imposed 30-day deadline for prehearing publication of a proposed regulation in the District of Columbia Register, but timely notice to public had been placed in two newspapers more than 30 days in advance, interested par-

ties had actual notice one week prior to hearing, hearing transcript revealed their vigorous participation in opposition to the regulation, and two extra weeks were allowed for filing of additional written comments, there was no substantial prejudice which could require repeal of the regulation. D.C. Code 1981, §§ 1-1506(a), 5-415. *Monaco v. District of Columbia Bd. of Zoning Adjustment*, 461 A.2d 1049, 1983 D.C. App. LEXIS 396 (1983).

— **Witnesses, hearings.**

Whether particular location of an apartment house would be deleterious to health is within field of expert testimony as regards zoning restrictions. *Hazen v. Hawley*, 86 F.2d 217, 1936 U.S. App. LEXIS 3697 (1936).

Hearings of District of Columbia zoning commission concerning change of zoning were not invalid under statute because others than owners or residents within three-block area were heard. D.C. Code 1929, T. 25, § 521 et seq. *Hazen v. Hawley*, 86 F.2d 217, 1936 U.S. App. LEXIS 3697 (1936).

There is no requirement under District of Columbia Administrative Procedure Act that opponents of a rule be given opportunity to cross-examine witnesses testifying favorably or to rebut evidence presented by proponents. D.C. Code §§ 5-413 et seq., 5-415, 5-417. *Citizens Asso. of Georgetown v. Zoning Com. of District of Columbia*, 392 A.2d 1027, 1978 D.C. App. LEXIS 328 (1978).

In general.

Where following amendment of District of Columbia zoning map but prior to appellate review, zoning laws were amended to require that maps and amendments not be inconsistent with comprehensive plan for the National Capital, the amended law was to be applied and the amendment examined for conformity to the comprehensive plan. D.C. Code §§ 1-1510, 5-414, 5-415, 11-707(a), 11-722. *Capitol Hill Restoration Soc. v. Zoning Com.*, 380 A.2d 174, 1977 D.C. App. LEXIS 278 (1977).

The Zoning Commission, acting under delegated authority, is a quasi-legislative body. D.C. Code §§ 5-413, 5-415. *Citizens Asso. of Georgetown, Inc. v. Washington*, 291 A.2d 699, 1972 D.C. App. LEXIS 387 (1972).

Injunction.

Where owners and operators of substantial rental property in close proximity to proposed community correctional center brought action for a preliminary and permanent injunction barring District of Columbia officials from using the premises as such a center on ground that the center was not a rooming house under District of Columbia zoning regulations, it was improper to determine merits and to issue a permanent injunction without requiring recourse under doctrine of primary jurisdiction to

administrative remedies available to parties that would have provided guidance of administrative expertise which the courts should require. Zoning Act of June 20, 1938, 52 Stat. 797; D.C. Code §§ 5-412, 5-413, 5-420. *Brawner Bldg., Inc. v. Shehyn*, 442 F.2d 847, 1971 U.S. App. LEXIS 11721 (C.A.D.C. 1971).

Judicial review generally.

Zoning commission acts in legislative capacity and is not subject to rules of procedure governing conduct of judicial hearings, and only if its action is palpably arbitrary can court set it aside. *Garrity v. District of Columbia*, 86 F.2d 207, 1936 U.S. App. LEXIS 3696 (1936).

Statutory right to a hearing before zoning regulation amendment does not, standing alone, confer "contested case" status on administrative proceeding for a purpose of the District of Columbia Administrative Procedure Act under which judicial review is limited to decisions or orders in contested cases, and critical issue is whether or not hearing required is adjudicative or legislative in nature. D.C. Code § 5-415. *Dupont Circle Citizen's Asso. v. District of Columbia Zoning Com.*, 343 A.2d 296, 1975 D.C. App. LEXIS 433 (1975).

Decision by District of Columbia Zoning Commission, after public hearing, that halfway houses should be permitted in R-4 and less restricted districts was legislative in character and not subject to the "contested cases" procedural safeguards of the District of Columbia Administrative Procedure Act, so that court could not review the underlying merits of any questions or issues raised at hearing. D.C. Code §§ 5-413 to 5-415. *Dupont Circle Citizen's Asso. v. District of Columbia Zoning Com.*, 343 A.2d 296, 1975 D.C. App. LEXIS 433 (1975).

When Zoning Commission exercised its authority to determine needs of area by denying without public hearing a proposed amendment to zoning maps to change zoning classification of property the Commission was acting legislatively and was not subject to the "contested case" provisions of Administrative Procedure Act, with the result that such decision was not subject to direct review by the Court of Appeals, despite contention of property owner that mere submission of proposed amendment, and the subsequent rejection of same, constituted a "hearing" required by law, and thus was subject to review. D.C. Code §§ 1-1501 et seq., 1-1502(8), 1-1510, 5-415, 11-722. *W. C. & A. N. Miller Dev. Co. v. District of Columbia Zoning Com.*, 340 A.2d 420, 1975 D.C. App. LEXIS 372 (1975).

Jurisdiction.

A suit to declare a zoning order void is not an appeal on the merits of the issues presented to the Zoning Commission of the District of Columbia at its hearing. D.C. Code 1940, § 5-412

et seq. *Lewis v. District of Columbia*, 190 F.2d 25, 1951 U.S. App. LEXIS 2373 (C.A.D.C. 1951).

Suit in equity by property owner to require zoning commission of District of Columbia to re-zone property so as to permit erection of apartment house held not subject to dismissal on ground that there was an adequate remedy at law by petition for mandamus directed against building inspectors to compel issuance of building permit for an apartment. *Hazen v. Hawley*, 86 F.2d 217, 1936 U.S. App. LEXIS 3697 (1936).

Proceedings held under the District of Columbia zoning commission's rules of practice, resulting in down-zoning of area, were not a "contested case" within meaning of Administrative Procedure Act, but were adversary in nature and equity could be invoked. U.S. Const. Amend. 5; 5 U.S.C. § 501 et seq. *Ruppert v. Washington*, 366 F. Supp. 683, 1973 U.S. Dist. LEXIS 14560 (1973).

Fact that plaintiffs claiming that District of Columbia zoning commission acted arbitrarily and illegally in down-zoning area, had requested, after suit was filed, that commission state its reasons in form of motion for reconsideration did not defeat jurisdiction to review commission's action where there was no likelihood of favorable action by the commission. U.S. Const. Amend. 5; 5 U.S.C. § 501 et seq. *Ruppert v. Washington*, 366 F. Supp. 683, 1973 U.S. Dist. LEXIS 14560 (1973).

Approval of a preliminary application for a planned unit development was a contested case under the District of Columbia's Administrative Procedure Act and is properly reviewable as a final order. D.C. Code § 1-1510. *Dupont Circle Citizens Assn. v. District of Columbia Zoning Com.*, 426 A.2d 327, 1981 D.C. App. LEXIS 211 (1981).

Controversy which arose out of zoning commission's actions in granting change in zoning so as to permit townhouse development, which action followed an adjudicatory hearing, was a "contested case" so that Court of Appeals had jurisdiction to review the action. D.C. Code § 1-1510. *Palisades Citizens Assn., Inc. v. District of Columbia Zoning Com.*, 368 A.2d 1143, 1977 D.C. App. LEXIS 413 (1977).

Court of Appeals has jurisdiction to review decisions of the Zoning Commission in accordance with the Administrative Procedure Act, limited only to those decisions or orders entered in contested cases. D.C. Code §§ 1-1501 et seq., 1-1502(8), 1-1510, 11-722. *W. C. & A. N. Miller Dev. Co. v. District of Columbia Zoning Com.*, 340 A.2d 420, 1975 D.C. App. LEXIS 372 (1975).

When Zoning Commission exercised its authority to determine needs of area by denying without public hearing a proposed amendment to zoning maps to change zoning classification

of property the Commission was acting legislatively and was not subject to the "contested case" provisions of Administrative Procedure Act, with the result that such decision was not subject to direct review by the Court of Appeals, despite contention of property owner that mere submission of proposed amendment, and the subsequent rejection of same, constituted a "hearing" required by law, and thus was subject to review. D.C. Code §§ 1-1501 et seq., 1-1502(8), 1-1510, 5-415, 11-722. *W. C. & A. N. Miller Dev. Co. v. District of Columbia Zoning Com.*, 340 A.2d 420, 1975 D.C. App. LEXIS 372 (1975).

Orders.

Order of District of Columbia zoning commission changing plaintiff's property to restricted area district held not void for uncertainty respecting description of property, where order referred to prior order changing to such district all property within specified boundaries except property for which protests against inclusion were on file and protests had been filed on behalf of plaintiff's property, and order described lots and parcels located in or near following squares and then square in which plaintiff's property was listed. D.C. Code 1929, T. 25, § 521 et seq. *Garrity v. District of Columbia*, 86 F.2d 207, 1936 U.S. App. LEXIS 3696 (1936).

Order of District of Columbia zoning commission changing property to restricted area district held not invalid because of proviso that commission would consider applications to construct residential development prohibited therein, on theory that proviso contemplated consideration without public hearing, since proviso, if ambiguous, would be construed to make it conform with purpose of statute to accord public hearing. D.C. Code 1929, T. 25, § 521 et seq. *Garrity v. District of Columbia*, 86 F.2d 207, 1936 U.S. App. LEXIS 3696 (1936).

Order of District of Columbia zoning commission changing property to restricted area district held not invalid because of proviso that commission would consider application to construct building prohibited therein, on theory that proviso contemplated consideration without public hearing, absent showing of injury through denial of public hearing. D.C. Code 1929, T. 25, § 521 et seq. *Garrity v. District of Columbia*, 86 F.2d 207, 1936 U.S. App. LEXIS 3696 (1936).

Sufficiency of evidence.

Decision of District of Columbia zoning commission down-zoning a substantial portion of downtown area had a substantial relationship to the general welfare and was supported by adequate reasons. D.C. Code § 1-1501 et seq.; National Environmental Policy Act of 1969, § 102(2)(C), 42 U.S.C. § 4332(2)(C). *Ruppert v.*

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Washington, 366 F. Supp. 686, 1973 U.S. Dist. LEXIS 12806 (1973), affirmed without opinion by 543 F.2d 416, 177 U.S. App. D.C. 269 (1976), affirmed without opinion by 543 F.2d 417, 177 U.S. App. D.C. 270 (1976).

Evidence that there had been substantial changes in the neighborhood since adoption of comprehensive zoning plan and that zoning change to permit townhouse development would promote orderly development of the property and would be in harmony with the comprehensive plan was sufficient showing of substantial change to sustain rezoning. *Palisades Citizens Assoc., Inc. v. District of Columbia Zoning Com.*, 368 A.2d 1143, 1977 D.C. App. LEXIS 413 (1977).

Findings that, since adoption of comprehensive

zoning plan, there had been substantial changes along a major arterial highway which made rezoning of site for permit townhouse development appropriate, that the change would promote the early and orderly development of the property, that the rezoning would not produce dangerous or objectionable traffic conditions, that the amendment was in harmony with the comprehensive zoning plan, that the amendment would not adversely affect the character or uses of adjacent districts, and that the townhouse development would require site plan review were sufficient to support rezoning of the property. *Palisades Citizens Assoc., Inc. v. District of Columbia Zoning Com.*, 368 A.2d 1143, 1977 D.C. App. LEXIS 413 (1977).

§ 6-641.04. Zoning regulations — Vote required for amendment.

Any amendment of the regulations or any of them or of the maps or any of them shall require the favorable vote of not less than a full majority of the members of the Commission.

(June 20, 1938, 52 Stat. 798, ch. 534, § 4.)

Prior Codifications. — 1981 Ed., § 5-416. 1973 Ed., § 5-416.

CASE NOTES

Hearings.

Landowners objecting to rezoning of adjoining property were not afforded their statutory right to a reasonable opportunity to be heard where only two of the five members of the zoning commission attended the public hearing

to hear protests against the rezoning, and concurrence of a majority of the whole commission was required by statute to change zoning. D.C. Code §§ 5-412, 5-415, 5-416. *Allen v. Zoning Com. of District of Columbia*, 449 F.2d 1100, 1971 U.S. App. LEXIS 9056 (C.A.D.C. 1971).

§ 6-641.05. Zoning regulations — Proposed regulations or amendments; public hearing; notice; National Capital Planning Commission.

(a)(1) No zoning regulation or map, or any amendment thereto, may be adopted by the Zoning Commission until the Zoning Commission:

(A) Has held a public hearing, after notice, on such proposed regulation, map, or amendment; and

(B) After such public hearing, submitted such proposed regulation, map, or amendment to the National Capital Planning Commission for comment and review.

(2) If the National Capital Planning Commission fails to submit its comments regarding any such regulation, map, or amendment within 30 days after submission of such regulation, map, or amendment to it, then the Zoning Commission may proceed to act upon the proposed regulation, map, or amendment without further comment from the National Capital Planning Commission.

(b) The notice required by subparagraph (A) of paragraph (1) of subsection (a) of this section shall be published at least 30 days prior to such public hearing and shall include a statement as to the time and place of the hearing and a summary of all changes in existing zoning regulations which would be made by adoption of the proposed regulation, map, or amendment. The Zoning Commission shall give such additional notice as it deems expedient and practicable. All interested persons shall be given a reasonable opportunity to be heard at such public hearing. If the hearing is adjourned from time to time, the time and place of reconvening shall be publicly announced prior to adjournment.

(c) The Zoning Commission shall deposit with the National Capital Planning Commission all zoning regulations, maps, or amendments thereto, adopted by it.

(June 20, 1938, 52 Stat. 798, ch. 534, § 5; Dec. 24, 1973, 87 Stat. 810, Pub. L. 93-198, title IV, § 492(b)(2).)

Cross references. — National Capital Planning Commission, zoning and subdivision functions, see § 2-1006.

Prior Codifications. — 1981 Ed., § 5-417.
1973 Ed., § 5-417.

Transfer of Functions. — “National Capital Planning Commission” was substituted for “National Capital Park and Planning Commis-

sion” throughout this section in view of the Act of June 6, 1924, ch. 270, § 9, as added by the Act of July 19, 1952, 66 Stat. 790, ch. 949, § 1, which transferred the functions, powers, and duties of the National Capital Park and Planning Commission to the National Capital Planning Commission.

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Zoning commission's approval of preliminary application for planned unit development conditioned on rezoning of a section of the planned unit development area was not, in effect, a final rezoning. *Dupont Circle Citizens Asso. v. District of Columbia Zoning Com.*, 426 A.2d 327, 1981 D.C. App. LEXIS 211 (1981).

Action of zoning commission in approving zoning change on property to permit townhouse development did not constitute spot zoning. *Palisades Citizens Assoc., Inc. v. District of Columbia Zoning Com.*, 368 A.2d 1143, 1977 D.C. App. LEXIS 413 (1977).

Once a single parcel of land is rezoned it necessarily affects the surrounding area because a use previously prohibited in the area is now allowed, and it also invites other area property owners to apply for similar amendments, so that rezoning decision, while affecting individual landowner who proposes amendment of zoning ordinance, is basically one of policy which takes into consideration the needs of the area as a whole. *W. C. & A. N. Miller Dev. Co. v. District of Columbia Zoning Com.*, 340 A.2d 420, 1975 D.C. App. LEXIS 372 (1975).

Sole authority for any amendment of zoning regulations relating to parking was in zoning commission, not Board of Zoning Adjustment. D.C. Code §§ 5-413, 5-420. *Citizens Asso. of Georgetown, Inc. v. District of Columbia Board of Zoning Adjustment*, 337 A.2d 495, 1975 D.C. App. LEXIS 377 (1975).

Environmental impact.

District of Columbia Zoning Commission and the National Capital Planning Commission are not required to prepare an environmental im-

pact statement in connection with their considerations of application for redevelopment of apartment complex either under provision of District Zoning Regulations governing planned unit developments or provisions governing amendments of zoning maps and zoning regulations. National Environmental Policy Act of 1969, §§ 1 et seq., 101, 102, 42 U.S.C. §§ 4321 et seq., 4331, 4332; District of Columbia Self-Government and Governmental Reorganization Act, §§ 101 et seq., 102(a), 203, 423, 492, 87 Stat. 774; D.C. Code §§ 5-412 et seq., 5-417. McLean Gardens Residents, Asso. v. National Capital Planning Com., 390 F. Supp. 165, 1974 U.S. Dist. LEXIS 8239 (1974).

Absence of pending application for redevelopment of apartment complex did not render request for determination of whether requirement of an environmental impact statement would be triggered by redevelopment under either District of Columbia Zoning Regulation for planned unit developments or provisions for amendment of zoning maps a request for advisory opinion since issues were legal ones involving construction of statutes and regulations and were basically independent of facts surrounding a specific redevelopment proposal, redevelopment would have to occur under one of the two provisions and disposing of matter would avoid subsequent prolonged interference with the administrative process. National Environmental Policy Act of 1969, §§ 1 et seq., 102, 42 U.S.C. §§ 4321 et seq., 4332; District of Columbia Self-Government and Governmental Reorganization Act, § 101 et seq., 87 Stat. 774; U.S. Const. art. 3, § 2. McLean Gardens Residents, Asso. v. National Capital Planning Com., 390 F. Supp. 165, 1974 U.S. Dist. LEXIS 8239 (1974).

Although the District of Columbia Zoning Commission and National Capital Planning Commission are not required to prepare an environmental impact statement in connection with applications under the District's zoning regulations for planned unit development or for amendment of zoning maps and zoning regulations, the environmental policies delineated in the National Environmental Policy Act should find expression in the planning and zoning process in the District; proper avenue for implementation of the purposes of the NEPA is in the planning operations of the National Capital Planning Commission, particularly in formulation of the Comprehensive Plan. National Environmental Policy Act of 1969, §§ 1 et seq., 102, 42 U.S.C. §§ 4321 et seq., 4332; District of Columbia Self-Government and Governmental Reorganization Act, § 101 et seq., 87 Stat. 774; National Capital Planning Act of 1952, § 4(a), 40 U.S.C. § 71c(a); D.C. Code § 1-1004(a). McLean Gardens Residents, Asso. v. National Capital Planning Com., 390 F. Supp. 165, 1974 U.S. Dist. LEXIS 8239 (1974).

National Environmental Policy Act was not intended to reach zoning operations on the local governmental level. National Environmental Policy Act of 1969, §§ 1 et seq., 102, 42 U.S.C. §§ 4321 et seq., 4332. McLean Gardens Residents, Asso. v. National Capital Planning Com., 390 F. Supp. 165, 1974 U.S. Dist. LEXIS 8239 (1974).

When passing on application for planned unit developments or amendments to zoning map and regulations the District of Columbia Zoning Commission is not free to ignore environmental policy; where the potential environmental effects of the Commission's decision are substantial, it must at least consider the environmental issue to fulfill its public interest mandate. District of Columbia Self-Government and Governmental Reorganization Act, §§ 203, 423, 492, 87 Stat. 774. McLean Gardens Residents, Asso. v. National Capital Planning Com., 390 F. Supp. 165, 1974 U.S. Dist. LEXIS 8239 (1974).

Inasmuch as District of Columbia zoning commission which down-zoned substantial portion of downtown area was not a federal agency, no environmental impact statement was required. D.C. Code § 1-1501 et seq.; National Environmental Policy Act of 1969, § 102(2)(C), 42 U.S.C. § 4332(2)(C). Ruppert v. Washington, 366 F. Supp. 686, 1973 U.S. Dist. LEXIS 12806 (1973), affirmed without opinion by 543 F.2d 416, 177 U.S. App. D.C. 269 (1976), affirmed without opinion by 543 F.2d 417, 177 U.S. App. D.C. 270 (1976).

Findings and determination.

Zoning commission of the District of Columbia was not required to state its reasons nor make findings of fact in denying application for change in zoning classification. D.C. Code § 5-412. Shenk v. Zoning Com. of District of Columbia, 440 F.2d 295, 1971 U.S. App. LEXIS 11299 (C.A.D.C. 1971).

Property owner who had petitioned for rezoning of property located in restricted area in which erection of apartment houses was forbidden for rezoning of property to specified zoning district in which erection of apartment houses was permitted held entitled to determination as to whether continued use restriction of existing zoning was reasonable. Hazen v. Hawley, 86 F.2d 217, 1936 U.S. App. LEXIS 3697 (1936).

Inasmuch as judicial review of action of District of Columbia zoning commission in down-zoning area of city would be facilitated by a statement of the commission's reasons, court would direct commission to state its reasons for the down-zoning order, and to provide statement of the environmental factors considered persuasive of the action taken. National Environmental Policy Act of 1969, § 2 et seq., 42 U.S.C. § 4321 et seq. Ruppert v. Washington,

366 F. Supp. 683, 1973 U.S. Dist. LEXIS 14560 (1973).

Remand was required for explanation by District of Columbia Zoning Commission of its conclusion that planned unit development was consistent with District's comprehensive plan; simple conclusory statement without explanation was insufficient where it appeared, at least facially, that development was inconsistent with plan. D.C. Code 1981, § 5-414. *Blagden Alley Ass'n v. District of Columbia Zoning Com.*, 590 A.2d 139, 1991 D.C. App. LEXIS 103 (1991).

Remand was required for explanation of how approved planned unit development was consistent with District of Columbia Zoning Commission regulations; approval of application containing only off-site amenities appeared, at least facially, to run afoul of regulations and, though Commission was free to regulate through contested case proceedings, it was required to set forth basis for its decision with such clarity as to be understandable. *Blagden Alley Ass'n v. District of Columbia Zoning Com.*, 590 A.2d 139, 1991 D.C. App. LEXIS 103 (1991).

Grounds for amendments.

Action of zoning commission of District of Columbia, contrary to recommendation of zoning advisory council, in rejecting application for change of zoning classification from single-family to garden-type apartments was arbitrary, in light of record disclosing, *inter alia*, that property was single-family island in sea of apartment zoning, that in 11 previous cases in neighborhood commission had granted applications over similar objections, relating to lack of governmental facilities, and that there was need for additional housing in the area. D.C. Code § 5-417. *Shenk v. Zoning Com. of District of Columbia*, 440 F.2d 295, 1971 U.S. App. LEXIS 11299 (C.A.D.C. 1971).

It was not necessary to show mistake in previous zoning in order to permit change in zoning, on the grounds of substantial change, so as to permit townhouse development. *Palisades Citizens Assoc., Inc. v. District of Columbia Zoning Com.*, 368 A.2d 1143, 1977 D.C. App. LEXIS 413 (1977).

Hearings.

— Admissibility of evidence, hearings.

In suit by property owner to require rezoning of property so as to permit erection of apartment, admission of evidence of doctor who was shown pictures of projected apartment which was planned to be erected on property, and who testified as to effect erection of such an apartment, or modern apartment, would have on public health of territory adjacent to property, held not prejudicial error. *Hazen v.*

Hawley, 86 F.2d 217, 1936 U.S. App. LEXIS 3697 (1936).

In property owner's suit to require rezoning of property so as to permit erection of an apartment, admission of pencil sketches of projected apartment for property to prove that sketches were before zoning commission upon hearing of petition for rezoning held not prejudicial error. *Hazen v. Hawley*, 86 F.2d 217, 1936 U.S. App. LEXIS 3697 (1936).

On an administrative hearing with respect to granting an exception to the zoning regulations to permit the erection of a gasoline station, fact that letter opposing the grant of the application from the capital planning commission was apparently based on hearsay and that neither its writer nor the member of the staff who made the investigation was present for cross-examination did not affect the admissibility of the letter, as would be case at a trial before the judicial tribunal. D.C. Code 1951, §§ 5-413, 5-420. *O'Boyle v. Coe*, 155 F.Supp. 581, 1957 U.S. Dist. LEXIS 2978 (D.D.C.1957).

— Ex parte communications, hearings.

Contacts of District of Columbia zoning commission with federal agencies did not defeat validity of down-zoning order of the commission on theory that the commission considered information *ex parte*. D.C. Code § 1-1501 *et seq.*; National Environmental Policy Act of 1969, § 102(2)(C), 42 U.S.C. § 4332(2)(C). *Ruppert v. Washington*, 366 F. Supp. 686, 1973 U.S. Dist. LEXIS 12806 (1973), affirmed without opinion by 543 F.2d 416, 177 U.S. App. D.C. 269 (1976), affirmed without opinion by 543 F.2d 417, 177 U.S. App. D.C. 270 (1976).

Ex parte communications between Zoning Commission staff and various developers during rule-making proceeding relating to Georgetown waterfront did not violate requirements of District of Columbia Administrative Procedure Act or due process, and did not deny a fair hearing. D.C. Code §§ 1-1501 *et seq.*, 5-413 *et seq.* *Citizens Asso. of Georgetown v. Zoning Com. of District of Columbia*, 392 A.2d 1027, 1978 D.C. App. LEXIS 328 (1978).

— In general.

Proceedings before District of Columbia zoning commission are quasi-legislative in character, not adjudicative in nature, and strictures of the District of Columbia Administrative Procedure Act and full range of due process protections necessary to an adversary adjudication are not applicable. D.C. Code § 1-1501 *et seq.*; National Environmental Policy Act of 1969, § 102(2)(C), 42 U.S.C. § 4332(2)(C). *Ruppert v. Washington*, 366 F. Supp. 686, 1973 U.S. Dist. LEXIS 12806 (1973), affirmed without opinion by 543 F.2d 416, 177 U.S. App. D.C. 269 (1976), affirmed without opinion by 543 F.2d 417, 177 U.S. App. D.C. 270 (1976).

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In performance of adjudicatory function by Board of Zoning Adjustment of District of Columbia, parties whose rights are involved are entitled to same fairness, impartiality and independence of judgment as are expected in court of law. D.C. Code 1961, §§ 1-216, 1-218, 5-412, 5-413, 5-414, 5-420. *Jarrott v. Scrivener*, 225 F. Supp. 827, 1964 U.S. Dist. LEXIS 7576 (D.D.C.1964).

Restraints of District of Columbia Administrative Procedure Act and full range of due process protections necessary to an adversary adjudication were not applicable to rulemaking proceedings before the Zoning Commission. D.C. Code §§ 1-1501 et seq., 5-413 et seq. *Citizens Asso. of Georgetown v. Zoning Com. of District of Columbia*, 392 A.2d 1027, 1978 D.C. App. LEXIS 328 (1978).

Zoning Commission properly proceeded by rulemaking in preparing new zoning proposals for Georgetown waterfront. D.C. Code § 5-413 et seq. *Citizens Asso. of Georgetown v. Zoning Com. of District of Columbia*, 392 A.2d 1027, 1978 D.C. App. LEXIS 328 (1978).

— Necessity and sufficiency, hearings.

Hearings of District of Columbia zoning commission concerning change of zoning were not invalid under statute because plaintiff's property was considered with a large number of other tracts. D.C. Code 1929, T. 25, § 521 et seq. *Garrity v. District of Columbia*, 86 F.2d 207, 1936 U.S. App. LEXIS 3696 (1936).

Validity of proceedings to change zoning regulations held not affected by motive of commission. Zoning Act March 1, 1920, §§ 4, 5, 41 Stat. 500. *Larrabee v. Bell*, 10 F.2d 986, 1926 U.S. App. LEXIS 2314 (1926).

Where there was a quorum of the zoning commission at the public hearings, where decision to grant application for change in zoning was made unanimously by the entire five member commission, where the order itself, containing the findings of fact and conclusions of law, was later signed by three members, two of whom had been present at the hearings, and where opportunity was granted to objectors to file exceptions and present argument to majority of those who rendered the order, the provisions of the Administrative Procedure Act were sufficiently complied with. D.C. Code § 1-1501 et seq. *Palisades Citizens Assoc., Inc. v. District of Columbia Zoning Com.*, 368 A.2d 1143, 1977 D.C. App. LEXIS 413 (1977).

Hearing upon property owner's proposed zoning map amendment before its denial was not constitutionally required. *W. C. & A. N. Miller Dev. Co. v. District of Columbia Zoning Com.*, 340 A.2d 420, 1975 D.C. App. LEXIS 372 (1975).

— Notice, hearings.

Zoning classification, excluding high-rise construction, was not invalidated by fact that

classification adopted was not proposed in notice for hearing, while high-rise classification was proposed, where it did not appear that subject of the change was not aired at hearing, zoning commission's reason for adopting exclusionary classification was unlikelihood that high-rise construction was then needed, and objecting party's predecessor, who owned property at time of zoning, did not object over period of years. D.C. Code § 5-415. *Gerstenfeld v. Jett*, 374 F.2d 333, 1967 U.S. App. LEXIS 7504 (C.A.D.C. 1967).

Statutory requirement that District of Columbia Commissioners give such notice, in addition to notice published in newspaper, of zoning hearing as Commission deems feasible and practical is not mandatory, but whether and what kind of added notice will be given in particular case is in discretion of Commission. D.C. Code 1951, § 5-415. *Aquino v. Tobriner*, 298 F.2d 674, 1961 U.S. App. LEXIS 2960 (C.A.D.C. 1961).

That substantial changes were made in zoning proposals originally put forward did not invalidate changes in regulations rezoning as "R-4," wherein only certain types of residential construction were permitted, lots formerly zoned "first commercial", where rezoning was purpose of hearing, even though original proposals did not require limitation on floor area ratio or lot occupancy and rezoning as adopted did. D.C. Code 1951, § 5-415. *Aquino v. Tobriner*, 298 F.2d 674, 1961 U.S. App. LEXIS 2960 (C.A.D.C. 1961).

Zoning Commission's failure to give additional notice beyond newspaper publication of notice of hearing on zoning regulation changes was not abuse of discretion in absence of showing that giving of additional notice was feasible and practical, particularly in view of fact that hearing was attended by considerable publicity. D.C. Code 1951, § 5-415. *Aquino v. Tobriner*, 298 F.2d 674, 1961 U.S. App. LEXIS 2960 (C.A.D.C. 1961).

Under statute providing that before zoning amendment can be put into effect a public hearing must be held thereon, landowners and public must be told as clearly and fully as is reasonably possible what is proposed by zoning authorities, and if several alternatives are to be considered for a particular area, all should be mentioned as possibilities. D.C. Code 1951, § 5-415. *Castle v. McLaughlin*, 270 F.2d 448, 1959 U.S. App. LEXIS 3586 (C.A.D.C. 1959).

Where notice of a public hearing was given of a proposed amendment to zoning regulations to upgrade a certain area and on hearing zoning commission rejected proposal, a different amendment of zoning regulation downgrading area did not acquire a belated validity by reason of a hearing held after it became effective on a petition filed by property owners to change zoning from classification to which it had been

downgraded to a higher zoning grade. D.C. Code 1951, § 5-415. *Castle v. McLaughlin*, 270 F.2d 448, 1959 U.S. App. LEXIS 3586 (C.A.D.C. 1959).

Where Zoning Commission failed to meet its self-imposed 30-day deadline for prehearing publication of a proposed regulation in the District of Columbia Register, but timely notice to public had been placed in two newspapers more than 30 days in advance, interested parties had actual notice one week prior to hearing, hearing transcript revealed their vigorous participation in opposition to the regulation, and two extra weeks were allowed for filing of additional written comments, there was no substantial prejudice which could require repeal of the regulation. D.C. Code 1981, §§ 1-1506(a), 5-415. *Monaco v. District of Columbia Bd. of Zoning Adjustment*, 461 A.2d 1049, 1983 D.C. App. LEXIS 396 (1983).

— Presumptions, hearings.

Actions of District of Columbia Zoning Commission are entitled to presumption of validity; however, the Commission must put forward or the court must be otherwise able to discern some basis in fact and law to justify Commission's action as consistent with reasonableness. D.C. Code § 5-413. *Citizens Ass'n of Georgetown, Inc. v. Zoning Com. of District of Columbia*, 477 F.2d 402, 1973 U.S. App. LEXIS 11831 (C.A.D.C. 1973).

Since the act of zoning is primarily legislative and is presumed to be valid, original classification of property of petitioner who desired to change zoning classification was valid. *W. C. & A. N. Miller Dev. Co. v. District of Columbia Zoning Com.*, 340 A.2d 420, 1975 D.C. App. LEXIS 372 (1975).

— Witnesses, hearings.

Whether particular location of an apartment house would be deleterious to health is within field of expert testimony as regards zoning restrictions. *Hazen v. Hawley*, 86 F.2d 217, 1936 U.S. App. LEXIS 3697 (1936).

Hearings of District of Columbia zoning commission concerning change of zoning were not invalid under statute because others than owners or residents within three-block area were heard. D.C. Code 1929, T. 25, § 521 et seq. *Hazen v. Hawley*, 86 F.2d 217, 1936 U.S. App. LEXIS 3697 (1936).

There is no requirement under District of Columbia Administrative Procedure Act that opponents of a rule be given opportunity to cross-examine witnesses testifying favorably or to rebut evidence presented by proponents. D.C. Code §§ 5-413 et seq., 5-415, 5-417. *Citizens Asso. of Georgetown v. Zoning Com. of District of Columbia*, 392 A.2d 1027, 1978 D.C. App. LEXIS 328 (1978).

Permitting assistant director of District of Columbia's office of planning and management to present, at executive session of Zoning Commission, a written summary and abstract of evidence presented at public hearing in connection with rezoning application did not violate opponent's right to hearing, etc., notwithstanding that the assistant director testified in favor of application at the public hearing, since he was merely acting in accordance with his position as a staff member of the Commission; however, appearance of propriety would have been enhanced had another staff member appeared at the executive session. D.C. Code §§ 1-1509(b, c), 5-417. *Capitol Hill Restoration Soc. v. Zoning Com.*, 380 A.2d 174, 1977 D.C. App. LEXIS 278 (1977).

Injunctions.

Where owners and operators of substantial rental property in close proximity to proposed community correctional center brought action for a preliminary and permanent injunction barring District of Columbia officials from using the premises as such a center on ground that the center was not a rooming house under District of Columbia zoning regulations, it was improper to determine merits and to issue a permanent injunction without requiring recourse under doctrine of primary jurisdiction to administrative remedies available to parties that would have provided guidance of administrative expertise which the courts should require. Zoning Act of June 20, 1938, 52 Stat. 797; D.C. Code §§ 5-412, 5-413, 5-420. *Brawner Bldg., Inc. v. Shehyn*, 442 F.2d 847, 1971 U.S. App. LEXIS 11721 (C.A.D.C. 1971).

Court had no right to substitute its judgment for that of District of Columbia Zoning Commission, and where nothing appeared to indicate that Commission's action in fixing minimum widths and sizes of residential lots was unreasonable or arbitrary, court could not enjoin enforcement of regulation. D.C. Code 1951, §§ 5-401 to 5-430, 5-413, 5-414, 5-417. *Salzer v. McLaughlin*, 240 F.2d 891, 1957 U.S. App. LEXIS 3425 (C.A.D.C. 1957).

Preliminary injunction against enforcement of down-zoning order of District of Columbia zoning commission would be denied where issues were novel, likelihood of success on merits appeared slight and there was no affirmative showing of urgent necessity for interference with major city planning efforts. *Ruppert v. Washington*, 366 F. Supp. 683, 1973 U.S. Dist. LEXIS 14560 (1973).

Judicial review generally.

A suit to declare a zoning order void is not an appeal on the merits of the issues presented to the Zoning Commission of the District of Columbia at its hearing. D.C. Code 1940, § 5-412 et seq. *Lewis v. District of Columbia*, 190 F.2d

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25, 1951 U.S. App. LEXIS 2373 (C.A.D.C. 1951).

Jurisdiction.

Landowners waived their right to hearing on probability of rezoning and its effect on value of the land by settling with government and were not entitled after settlement to maintain action against zoning commission for difference between value which they alleged that the land would have had if it had been rezoned and amount which they settled for with government on basis of existing zoning. U.S. Const. Amend. 5. *Sittenfeld v. Tobriner*, 459 F.2d 1137, 1971 U.S. App. LEXIS 6356 (C.A.D.C. 1971).

Proceedings held under the District of Columbia zoning commission's rules of practice, resulting in down-zoning of area, were not a "contested case" within meaning of Administrative Procedure Act, but were adversary in nature and equity could be invoked. U.S. Const. Amend. 5; 5 U.S.C. § 501 et seq. *Ruppert v. Washington*, 366 F. Supp. 683, 1973 U.S. Dist. LEXIS 14560 (1973).

Fact that plaintiffs claiming that District of Columbia zoning commission acted arbitrarily and illegally in down-zoning area, had requested, after suit was filed, that commission state its reasons in form of motion for reconsideration did not defeat jurisdiction to review commission's action where there was no likelihood of favorable action by the commission. U.S. Const. Amend. 5; 5 U.S.C. § 501 et seq. *Ruppert v. Washington*, 366 F. Supp. 683, 1973 U.S. Dist. LEXIS 14560 (1973).

Failure of challengers to issuance of building permit to pursue any action before Zoning Commission, which was exclusive agency vested with responsibility for assuring that zoning regulations were not inconsistent with comprehensive plan, amounted to failure to exhaust administrative remedies. *Tenley & Cleveland Park Emergency Committee v. District of Columbia Bd. of Zoning Adjustment*, 550 A.2d 331, 1988 D.C. App. LEXIS 206 (1988), writ of certiorari denied by 489 U.S. 1082, 109 S. Ct. 1539, 103 L. Ed. 2d 843, 1989 U.S. LEXIS 1460, 57 U.S.L.W. 3620 (1989).

Approval of a preliminary application for a planned unit development was a contested case under the District of Columbia's Administrative Procedure Act and is properly reviewable as a final order. D.C. Code § 1-1510. *Dupont Circle Citizens Asso. v. District of Columbia Zoning Com.*, 426 A.2d 327, 1981 D.C. App. LEXIS 211 (1981).

Controversy which arose out of zoning commission's actions in granting change in zoning so as to permit townhouse development, which action followed an adjudicatory hearing, was a "contested case" so that Court of Appeals had jurisdiction to review the action. D.C. Code § 1-1510. *Palisades Citizens Assoc., Inc. v. Dis-*

trict of Columbia Zoning Com., 368 A.2d 1143, 1977 D.C. App. LEXIS 413 (1977).

Court of Appeals has jurisdiction to review decisions of the Zoning Commission in accordance with the Administrative Procedure Act, limited only to those decisions or orders entered in contested cases. D.C. Code §§ 1-1501 et seq., 1-1502(8), 1-1510, 11-722. *W. C. & A. N. Miller Dev. Co. v. District of Columbia Zoning Com.*, 340 A.2d 420, 1975 D.C. App. LEXIS 372 (1975).

When Zoning Commission exercised its authority to determine needs of area by denying without public hearing a proposed amendment to zoning maps to change zoning classification of property the Commission was acting legislatively and was not subject to the "contested case" provisions of Administrative Procedure Act, with the result that such decision was not subject to direct review by the Court of Appeals, despite contention of property owner that mere submission of proposed amendment, and the subsequent rejection of same, constituted a "hearing" required by law, and thus was subject to review. D.C. Code §§ 1-1501 et seq., 1-1502(8), 1-1510, 5-415, 11-722. *W. C. & A. N. Miller Dev. Co. v. District of Columbia Zoning Com.*, 340 A.2d 420, 1975 D.C. App. LEXIS 372 (1975).

National Capital Planning Commission.

The District of Columbia Zoning Commission, in determining whether to adopt interim amendment to zoning ordinance preventing major construction in waterfront area until completion of study looking toward implementation of National Capitol Planning Commission's comprehensive land use plan, was not bound to follow NCPC's recommendation to adopt interim amendment; Zoning Commission was not required to show a compelling public interest before it could override recommendation. D.C. Code §§ 1-1001 et seq., 1-1008(a), 5-413. *Citizens Ass'n of Georgetown, Inc. v. Zoning Com. of District of Columbia*, 477 F.2d 402, 1973 U.S. App. LEXIS 11831 (C.A.D.C. 1973).

District of Columbia Zoning Commission must accord substantial weight and respect to the National Planning Commission's statutorily authorized commentary on proposed maps, regulations and amendments to the comprehensive plan; the record must contain a strong basis for resort to a different interpretation. D.C. Code §§ 1-1002, 1-1004(a), 1-121, 1-126, 1-1001 et seq., 1-1002(a)(4), (a)(4)(D, F), (e), 1-1008(a), 1-1510, 5-413, 5-414; U.S. Const. art. 1, § 8, cl. 17. *Capitol Hill Restoration Soc. v. Zoning Com.*, 380 A.2d 174, 1977 D.C. App. LEXIS 278 (1977).

Orders.

Order of District of Columbia zoning commission changing plaintiff's property to restricted

area district held not void for uncertainty respecting description of property, where order referred to prior order changing to such district all property within specified boundaries except property for which protests against inclusion were on file and protests had been filed on behalf of plaintiff's property, and order described lots and parcels located in or near following squares and then square in which plaintiff's property was listed. D.C. Code 1929, T. 25, § 521 et seq. *Garrity v. District of Columbia*, 86 F.2d 207, 1936 U.S. App. LEXIS 3696 (1936).

Order of District of Columbia zoning commission changing property to restricted area district held not invalid because of proviso that commission would consider applications to construct residential development prohibited therein, on theory that proviso contemplated consideration without public hearing, since proviso, if ambiguous, would be construed to make it conform with purpose of statute to accord public hearing. D.C. Code 1929, T. 25, § 521 et seq. *Garrity v. District of Columbia*, 86 F.2d 207, 1936 U.S. App. LEXIS 3696 (1936).

Order of District of Columbia zoning commission changing property to restricted area district held not invalid because of proviso that commission would consider application to construct building prohibited therein, on theory that proviso contemplated consideration without public hearing, absent showing of injury through denial of public hearing. D.C. Code 1929, T. 25, § 521 et seq. *Garrity v. District of Columbia*, 86 F.2d 207, 1936 U.S. App. LEXIS 3696 (1936).

Record.

Planned unit development applicant, whose application was approved on condition that it provide off-site residential housing amenities and that it record covenant restricting owners to using such property for nontransient residential use only, was required to place draft covenant on record for examination of parties opposing approval. *Blagden Alley Ass'n v. District of Columbia Zoning Com.*, 590 A.2d 139, 1991 D.C. App. LEXIS 103 (1991).

Scope and standard of review.

District Court and Court of Appeals may not substitute their judgment for that of zoning commission and may not set aside its action unless it was clearly arbitrary, unreasonable

and had no substantial relation to general welfare. D.C. Code 1961, § 5-417. *Association for Preservation of 1700 Block of N Street v. Duke*, 356 F.2d 344, 1966 U.S. App. LEXIS 7381 (C.A.D.C.1966).

Zoning commission acts in legislative capacity and is not subject to rules of procedure governing conduct of judicial hearings, and only if its action is palpably arbitrary can court set it aside. *Garrity v. District of Columbia*, 86 F.2d 207, 1936 U.S. App. LEXIS 3696 (1936).

Sufficiency of evidence.

Decision of District of Columbia zoning commission down-zoning a substantial portion of downtown area had a substantial relationship to the general welfare and was supported by adequate reasons. D.C. Code § 1-1501 et seq.; National Environmental Policy Act of 1969, § 102(2)(C), 42 U.S.C. § 4332(2)(C). *Ruppert v. Washington*, 366 F. Supp. 686, 1973 U.S. Dist. LEXIS 12806 (1973), affirmed without opinion by 543 F.2d 416, 177 U.S. App. D.C. 269 (1976), affirmed without opinion by 543 F.2d 417, 177 U.S. App. D.C. 270 (1976).

Evidence that there had been substantial changes in the neighborhood since adoption of comprehensive zoning plan and that zoning change to permit townhouse development would promote orderly development of the property and would be in harmony with the comprehensive plan was sufficient showing of substantial change to sustain rezoning. *Palisades Citizens Assoc., Inc. v. District of Columbia Zoning Com.*, 368 A.2d 1143, 1977 D.C. App. LEXIS 413 (1977).

Findings that, since adoption of comprehensive zoning plan, there had been substantial changes along a major arterial highway which made rezoning of site for permit townhouse development appropriate, that the change would promote the early and orderly development of the property, that the rezoning would not produce dangerous or objectionable traffic conditions, that the amendment was in harmony with the comprehensive zoning plan, that the amendment would not adversely affect the character or uses of adjacent districts, and that the townhouse development would require site plan review were sufficient to support rezoning of the property. *Palisades Citizens Assoc., Inc. v. District of Columbia Zoning Com.*, 368 A.2d 1143, 1977 D.C. App. LEXIS 413 (1977).

§ 6-641.06. Permissible maximum height of buildings.

The permissible height of buildings in any district shall not exceed the maximum height of buildings now authorized upon any street in any part of the District of Columbia by subchapter I of this chapter, regulating the height of buildings in the District of Columbia.

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(June 20, 1938, 52 Stat. 798, ch. 534, § 6; Oct. 13, 1964, 78 Stat. 1091, Pub. L. 88-659, § 1; Aug. 24, 1982, 96 Stat. 290, Pub. L. 97-241, § 203(c).)

Section references. — This section is referred to in § 6-651.01.

Prior Codifications. — 1981 Ed., § 5-418.
1973 Ed., § 5-418.

Effective date. — Section 204 of Public Law 97-241 provided that the amendments made by title II shall take effect on October 1, 1982.

CASE NOTES

ANALYSIS

In general.
Judicial review.

In general.

Determination of the corporation council, that the Height of Buildings Act permitted proposed international trade center in the District of Columbia to be 130 feet high, was based on consistent, demonstrable, administrative practice and was reasonable and consistent with language of the HBA; therefore, alternative interpretations of the HBA did not provide basis to overturn Corporation Counsel's determination. D.C. Code 1981, §§ 1-361, 5-405. *Techworld Dev. Corp. v. D.C. Preservation League*, 648 F. Supp. 106, 1986 U.S. Dist. LEXIS 21851 (1986), vacated by, remanded by 1987 U.S. App. LEXIS 18346 (D.C. Cir. June 2, 1987).

Foreign Missions Act provided exclusive procedure available for consideration of foreign embassy's application to construct 38-foot antenna tower at site of chancery in District of Columbia for operation of diplomatic radio station, and, thus, board of zoning adjustment was without jurisdiction to review application solely under District of Columbia law. D.C. Code 1981, § 5-424; D.C. Code 1987 Supp., §§ 5-1201 et seq., 5-1201(a), 5-1202(a)(2), 5-1206, 5-1206(i); Foreign Missions Act, §§ 201 et seq., 201(a), 202, 202(a)(2), 203, 206, 206(d, i), as amended, 22 U.S.C. §§ 4301 et seq., 4301(a), 4302, 4302(a)(2), 4303, 4306, 4306(d, i). *Embassy of People's Republic of Benin v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 310, 1987 D.C. App. LEXIS 507 (1987).

Judicial review.

Issue concerning maximum height permissi-

ble under the Height of Buildings Act for international trade center, which was to cover two city blocks in the District of Columbia, was ripe for resolution, even though local authorities had not yet issued construction permit allowing developers to rise to any specific height, where developers made clear their intention to build center to height of 130 feet and where federal Government and preservationists had made equally clear their position that such height was unlawful. D.C. Code 1981, § 5-405. *Techworld Dev. Corp. v. D.C. Preservation League*, 648 F. Supp. 106, 1986 U.S. Dist. LEXIS 21851 (1986), vacated by, remanded by 1987 U.S. App. LEXIS 18346 (D.C. Cir. June 2, 1987).

Preservationists, who sought to prevent developers from constructing international trade center in the District of Columbia to height of 130 feet, had no right of action under the Height of Buildings Act. D.C. Code 1981, § 5-405. *Techworld Dev. Corp. v. D.C. Preservation League*, 648 F. Supp. 106, 1986 U.S. Dist. LEXIS 21851 (1986), vacated by, remanded by 1987 U.S. App. LEXIS 18346 (D.C. Cir. June 2, 1987).

Federal Government's property interest in property, which was neighboring property to proposed site for international trade center in the District of Columbia, provided basis for Government to have right of action under the Height of Buildings Act to prevent developers from building center to height of 130 feet. D.C. Code 1981, § 5-405. *Techworld Dev. Corp. v. D.C. Preservation League*, 648 F. Supp. 106, 1986 U.S. Dist. LEXIS 21851 (1986), vacated by, remanded by 1987 U.S. App. LEXIS 18346 (D.C. Cir. June 2, 1987).

§ 6-641.06a. Nonconforming use.

The lawful use of a building or premises as existing and lawful at the time of the original adoption of any regulation heretofore adopted under the authority of § 6-621.01, or, in the case of any regulation adopted after June 20, 1938, under this subchapter, at the time of such adoption, may be continued although such use does not conform with the provisions of such regulation, provided no structural alteration, except such as may be required by law or regulation, or no enlargement is made or no new building is erected. The

Zoning Commission may in its discretion provide, upon such terms and conditions as may be set forth in the regulations, for the extension of any such nonconforming use throughout the building and for the substitution of nonconforming uses.

(June 20, 1938, 52 Stat. 798, ch. 534, § 7.)

Prior Codifications. — 1981 Ed., § 5-423. 1973 Ed., § 5-419.

CASE NOTES

ANALYSIS

Abandonment of use.
Accessory uses.
Administrative procedure.
Alterations generally.
Enlargement of use.
Establishment of nonconforming use.
In general.
Judicial review generally.
Leases.
Nature of nonconforming use.
Powers and duties of board and commission.
Regulations.

Abandonment of use.

Prior tenant's operation of a "Chinese carry-out" restaurant constituted an abandonment of prior nonconforming use of the property as a delicatessen as stated in certificate of occupancy; restaurant was not a delicatessen, and landlord had notice of violations of the certificate of occupancy and notice that extending the prior tenant's unauthorized use was not allowed. *Gorgone v. D.C. Bd. of Zoning Adjustment*, 973 A.2d 692, 2009 D.C. App. LEXIS 179 (2009).

To establish abandonment of a nonconforming use, one must demonstrate the intent to abandon and some overt act or failure to act which carries the implication of abandonment. *George Washington University v. District of Columbia Bd. of Zoning Adjustment*, 429 A.2d 1342, 1981 D.C. App. LEXIS 254 (1981).

Unauthorized physical changes in a building may provide the overt act to indicate the necessary intent to show abandonment of the right to a nonconforming use. D.C. Code § 5-419. *George Washington University v. District of Columbia Bd. of Zoning Adjustment*, 429 A.2d 1342, 1981 D.C. App. LEXIS 254 (1981).

Reconstruction on building to accommodate new nonconforming use pursuant to Board of Zoning Adjustment's approval manifests an intent to preserve, rather than to abandon, the right to nonconforming use. *George Washington University v. District of Columbia Bd. of Zoning Adjustment*, 429 A.2d 1342, 1981 D.C. App. LEXIS 254 (1981).

Neither modification nor cessation of renovation pursuant to building department orders

shows an abandonment of right to nonconforming use. *George Washington University v. District of Columbia Bd. of Zoning Adjustment*, 429 A.2d 1342, 1981 D.C. App. LEXIS 254 (1981).

If an owner evidences his rejection of the protection of a nonconforming use by discontinuing the nonconforming use, he abandons his right to exemption and thereafter must comply with the general zoning requirements. *George Washington University v. District of Columbia Bd. of Zoning Adjustment*, 429 A.2d 1342, 1981 D.C. App. LEXIS 254 (1981).

Evidence that landowner had sought special exception for restaurant use of his property, that petition for review of that decision had been dismissed, that landowner had sought again to change the use of the property from nonconforming use as a clothing store to nonconforming use as a restaurant and that the landowner had proceeded with those plans for a restaurant based on Board of Zoning Adjustment's approval sustained determination that right to nonconforming use had not been abandoned. *George Washington University v. District of Columbia Bd. of Zoning Adjustment*, 429 A.2d 1342, 1981 D.C. App. LEXIS 254 (1981).

Change from one nonconforming use to another pursuant to a Board of Zoning Adjustment approval does not establish either an overt act or an intent necessary to make out an abandonment of the right to nonconforming use. D.C. Code § 5-419. *George Washington University v. District of Columbia Bd. of Zoning Adjustment*, 429 A.2d 1342, 1981 D.C. App. LEXIS 254 (1981).

Zoning regulation to effect that in "b Restricted" area district, minimum dimension of yards and courts and maximum percentage of lot occupancy should be same as for "B" area district, except that thereafter no building should be erected or enlarged for use as flat, did not make existing flat use nonconforming, but left undisturbed continued use of existing flats and conversion to flat use of existing buildings, so long as there was no enlargement of structure, and it did not prohibit reinstitution of flat use on premises where flat use had been abandoned. *Silverstone v. District of Columbia Board of Zoning Adjustment*, 372 A.2d 1286, 1977 D.C. App. LEXIS 462 (1977), vacated in

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part by, amended by 396 A.2d 992, 1979 D.C. App. LEXIS 287 (D.C. 1979).

The discontinuance of a nonconforming use under zoning act results from concurrence of the intent to abandon and some overt act or failure to act which carries the implication of abandonment. *Wood v. District of Columbia*, 39 A.2d 67, 1944 D.C. App. LEXIS 150 (Cr.App. 1944).

Fact that building which was equipped as a stable, and which had been used for the nonconforming use of buying and selling horses, had been vacant for about six years before being taken over by defendant, did not establish abandonment of the nonconforming use, where building during extended period of vacancy was retained in same condition and was being advertised for lease as a stable. *Wood v. District of Columbia*, 39 A.2d 67, 1944 D.C. App. LEXIS 150 (Cr.App. 1944).

Accessory uses.

Accessory use at time restrictive zoning regulations were adopted could not become basis for principal nonconforming use, because such a result would undercut general policy underlying zoning regulations, i.e., policy of restricting nonconforming uses in order to promote ultimate conformity. D.C. Code 1973, § 5-419. *C & P Bldg. Ltd. Partnership v. District of Columbia Bd. of Zoning Adjustment*, 442 A.2d 129, 1982 D.C. App. LEXIS 289 (1982).

Substantial evidence supported determination of Board of Zoning Adjustment that office use existing at time that district was zoned residential was only accessory use and that owner was thus required to seek use variance before obtaining new certificate of occupancy for office use. D.C. Code 1973, § 5-419. *C & P Bldg. Ltd. Partnership v. District of Columbia Bd. of Zoning Adjustment*, 442 A.2d 129, 1982 D.C. App. LEXIS 289 (1982).

Administrative procedure.

Purpose of zoning regulation giving applicant for building permit chance to make rebuttal after administrative officer and any interested property owners or other interested persons have stated their side of case is to give applicant opportunity to rebut findings including those made as result of inspection of applicant's property. D.C. Code 1961, § 5-419. *Hot Shoppes, Inc. v. Clouser*, 231 F. Supp. 825, 1964 U.S. Dist. LEXIS 6657 (D.D.C.1964), affirmed by 346 F.2d 834, 120 U.S. App. D.C. 353, 1965 U.S. App. LEXIS 5604 (1965).

Any complaints on part of neighbors to noise or other disturbances were wholly immaterial to initial issue before Board on application for permit filed by restaurant to build structure on ground that it was required by Health Department. D.C. Code 1961, § 5-419. *Hot Shoppes, Inc. v. Clouser*, 231 F. Supp. 825, 1964 U.S. Dist.

LEXIS 6657 (D.D.C.1964), affirmed by 346 F.2d 834, 120 U.S. App. D.C. 353, 1965 U.S. App. LEXIS 5604 (1965).

Failure to permit applicant for building permit to question and rebut any evidence gathered at any inspection of his property by Board of Zoning Adjustment and to make inspection itself a matter of record was a denial of due process to applicant. D.C. Code 1961, § 5-419. *Hot Shoppes, Inc. v. Clouser*, 231 F. Supp. 825, 1964 U.S. Dist. LEXIS 6657 (D.D.C.1964), affirmed by 346 F.2d 834, 120 U.S. App. D.C. 353, 1965 U.S. App. LEXIS 5604 (1965).

Inspection of property, for which building permit was sought, by Zoning Board of Adjustment would constitute a "step taken" or "act done" within zoning regulation requiring Secretary of Board of Zoning Appeals to enter in docket all continuances, postponements and other steps taken or acts done by Board or officers on behalf of Board. D.C. Code 1961, § 5-419. *Hot Shoppes, Inc. v. Clouser*, 231 F. Supp. 825, 1964 U.S. Dist. LEXIS 6657 (D.D.C.1964), affirmed by 346 F.2d 834, 120 U.S. App. D.C. 353, 1965 U.S. App. LEXIS 5604 (1965).

There had been no denial of notice of issues involved based on certain statute, where concept of termination of nonconforming use by changing it to conforming use was part and parcel of theory of nonconforming uses and landowner should have been on notice that by applying for extension of nonconforming use zoning adjustment board was required to assess applicability of zoning regulation providing that when existing nonconforming use has been changed to conforming use, it shall not be changed back to nonconforming use; moreover, record disclosed that it was not until facts were developed at hearing that board determined relevance of such regulation, and landowner was then given opportunity to proffer its interpretation thereof. D.C. Code § 1-1509(a). *Lange v. District of Columbia Board of Zoning Adjustment*, 407 A.2d 1058, 1979 D.C. App. LEXIS 514 (1979).

It was within province of board of zoning adjustment to reject petitioners' contention regarding applicable quorum requirements on application for a special exception or, in alternative, a variance. D.C. Code § 5-419. *Bernstein v. District of Columbia Bd. of Zoning Adjustment*, 376 A.2d 816, 1977 D.C. App. LEXIS 353 (1977).

Alterations generally.

If there were not room inside restaurant to store commissary carts, restaurant owner which was directed by Health Department to store its commissary carts under cover would be entitled to building permit to construct structure to store carts, but, if there were room, application for building permit could be consid-

ered as request for variance requiring board to determine whether applicant had established hardship which would support issuance of variance. D.C. Code 1961, §§ 5-419, 5-420, subd. (3); Fed. Rules Civ. Proc. rule 52(a), 18 U.S.C. Hot Shoppes, Inc. v. Clouser, 231 F. Supp. 825, 1964 U.S. Dist. LEXIS 6657 (D.D.C.1964), affirmed by 346 F.2d 834, 120 U.S. App. D.C. 353, 1965 U.S. App. LEXIS 5604 (1965).

Proposed change of fenced-in structure to structure completely enclosed by four sides and roof constituted structural alteration within Zoning Act providing that nonconforming use may continue provided no structural alteration except such as may be required by law or regulation is erected. D.C. Code 1961, § 5-419. Hot Shoppes, Inc. v. Clouser, 231 F. Supp. 825, 1964 U.S. Dist. LEXIS 6657 (D.D.C.1964), affirmed by 346 F.2d 834, 120 U.S. App. D.C. 353, 1965 U.S. App. LEXIS 5604 (1965).

Where 315-unit building was built before zoning regulations required one parking space for every three apartment units and for every two hotel units, building was grandfathered for 105 spaces, number ordinarily required if building was apartment building, and building, as hotel, required 158 spaces, building owners were required to provide 53 spaces to reconvert building into hotel. D.C. Code 1981, § 5-423. Page Associates v. District of Columbia, 463 A.2d 649, 1983 D.C. App. LEXIS 406 (1983).

Although use existing and lawful at time of zoning change may be continued automatically as lawful nonconforming use, extension of or change in that nonconforming use triggers applicable zoning regulations. D.C. Code 1973, § 5-419. C & P Bldg. Ltd. Partnership v. District of Columbia Bd. of Zoning Adjustment, 442 A.2d 129, 1982 D.C. App. LEXIS 289 (1982).

Where building which was equipped as a stable had been used for nonconforming use of buying and selling horses, a subsequent use of premises for keeping horses for rent and boarding horses for others was a continuance of the prior non-conforming use. Wood v. District of Columbia, 39 A.2d 67, 1944 D.C. App. LEXIS 150 (Cr.App. 1944).

Enlargement of use.

Where area to be occupied by restaurant's altered structure was enclosed on two sides by roofless structure consisting of high basket-weave type wooden fence and structure for which building permit was sought would completely enclose existing structure with four sides and roof and proposed alteration would not increase business of restaurant which operated drive-in service that was a nonconforming use proposed new structure did not constitute an enlargement barred by Code prohibiting enlargement of nonconforming use. D.C. Code 1961, § 5-419. Hot Shoppes, Inc. v. Clouser, 231 F. Supp. 825, 1964 U.S. Dist. LEXIS 6657

(D.D.C.1964), affirmed by 346 F.2d 834, 120 U.S. App. D.C. 353, 1965 U.S. App. LEXIS 5604 (1965).

Board of zoning adjustment's interpretation of zoning regulation, which prohibited the enlargement of structures devoted to nonconforming uses, to prohibit enlargement of a structure containing a nonconforming use, even when the proposed enlargement is intended for a conforming use, was not clearly erroneous, was not inconsistent with the zoning regulations as a whole, and was not inconsistent with the Zoning Enabling Act. D.C. Code §§ 5-413 to 5-428. Lenkin v. District of Columbia Bd. of Zoning Adjustment, 428 A.2d 356, 1981 D.C. App. LEXIS 231 (1981).

Statute did not impose absolute prohibition on enlargement of nonconforming use and variance could be granted to increase height of roof of existing nonconforming use to facilitate its conversion from moving and storage warehouse to squash court facility. D.C. Code §§ 5-419, 5-420(3). Monaco v. District of Columbia Board of Zoning Adjustment, 409 A.2d 1067, 1979 D.C. App. LEXIS 525 (1979).

Any interpretation of zoning regulations which expands the prerogatives of nonconforming users is undesirable and interpretation of zoning regulations which confers benefit from violation of regulations is equally as undesirable. Lange v. District of Columbia Board of Zoning Adjustment, 407 A.2d 1058, 1979 D.C. App. LEXIS 514 (1979).

Although zoning adjustment board incorrectly assumed that nonconforming use was established on second floor of two-story building, it correctly concluded that it was prohibited from allowing extensions of nonconforming use to second floor after its conforming use as residence, since conforming use, following illegal use, operated within meaning of applicable zoning regulation, which provides that where existing nonconforming use has been changed to conforming use, it shall not be changed back to nonconforming use, so as to prohibit exercise of discretion of board to extend nonconforming office uses to entire premises. Lange v. District of Columbia Board of Zoning Adjustment, 407 A.2d 1058, 1979 D.C. App. LEXIS 514 (1979).

Establishment of nonconforming use.

Building owners' nonrejected application for converting apartment units into hotel units was erroneously stamped "complies with Zoning Regulations" and should have been stamped "Accepted for Filing," which certified that there was sufficient documentation to permit processing, and thus owners satisfied grandfathering provision. Page Associates v. District of Columbia, 463 A.2d 649, 1983 D.C. App. LEXIS 406 (1983).

Where sufficient parking was available to meet zoning regulation and availability of

building owners' options regarding which parking plan to use had been sanctioned, owners' failure to make final decision regarding parking did not prohibit processing of their applications for converting apartment units into hotel units, and thus owners satisfied grandfathering provision. *Page Associates v. District of Columbia*, 463 A.2d 649, 1983 D.C. App. LEXIS 406 (1983).

Party asserting right to continuation of non-conforming use had burden of establishing at administrative level that his use existed at time of enactment of restrictive zoning regulation, that it was lawful use at that time, and that it was use entitled to be protected and preserved. D.C. Code 1973, § 5-419. *C & P Bldg. Ltd. Partnership v. District of Columbia Bd. of Zoning Adjustment*, 442 A.2d 129, 1982 D.C. App. LEXIS 289 (1982).

That for many years prior to application for special exception subject space was used for office purposes by women's organization was not such as to establish that a nonconforming office use resulted so as to require a favorable order by board of zoning adjustment where, aside from unsupported statements of petitioners, there was no showing in record that any such office use was ever sanctioned by an occupancy permit as required by zoning regulations or that it was otherwise a legal use. D.C. Code § 5-419. *Bernstein v. District of Columbia Bd. of Zoning Adjustment*, 376 A.2d 816, 1977 D.C. App. LEXIS 353 (1977).

In prosecution for engaging in business of conducting rooming house without first having obtained license and for failure to obtain certificate of occupancy, if defendant wished to rely on prior nonconforming use provision of District of Columbia zoning statute, as a defense, burden was on defendant to prove that she was operating a rooming house prior to initial restriction of such use by zoning commission. Act March 1, 1920, §§ 1 et seq., 2, 41 Stat. 500; D.C. Code 1951, §§ 5-412 et seq., 5-419. *Hagans v. District of Columbia*, 97 A.2d 922, 1953 D.C. App. LEXIS 151 (Cr.App. 1953).

In general.

Restaurant had statutory right to continue utilizing same floor and land area utilized at time use became nonconforming. D.C. Code 1961 § 5-419. *Hot Shoppes, Inc. v. Clouser*, 231 F. Supp. 825, 1964 U.S. Dist. LEXIS 6657 (D.D.C.1964), affirmed by 346 F.2d 834, 120 U.S. App. D.C. 353, 1965 U.S. App. LEXIS 5604 (1965).

Even if refusal of zoning commissioners of District of Columbia to issue license to conduct rooming house to defendant was wrongful, defendant had no right to continue business without such license. Act March 1, 1920, § 2, 41 Stat. 500; D.C. Code 1951, §§ 5-412 et seq.,

5-419. *Hagans v. District of Columbia*, 97 A.2d 922, 1953 D.C. App. LEXIS 151 (Cr.App. 1953).

Judicial review generally.

Generally, remand to Board of Zoning Appeal for further proceedings is appropriate, but where abuse of discretion is manifest and it is clear that applicant has carried its burden of proof, then remand to Board with instructions to grant applicant's request is proper. D.C. Code 1961, § 5-419. *Hot Shoppes, Inc. v. Clouser*, 231 F. Supp. 825, 1964 U.S. Dist. LEXIS 6657 (D.D.C.1964), affirmed by 346 F.2d 834, 120 U.S. App. D.C. 353, 1965 U.S. App. LEXIS 5604 (1965).

That Board of Zoning Adjustment stated that it made an inspection of property and that equipment required by Health Department to be enclosed could have been placed somewhere inside existing structure so that construction of building to enclose equipment was not necessary, did not raise presumption that Board had facts to support its conclusion, where Board did not set forth facts upon which it relied on reaching conclusion that structure for which building permit was sought was not required. D.C. Code 1961, § 5-419. *Hot Shoppes, Inc. v. Clouser*, 231 F. Supp. 825, 1964 U.S. Dist. LEXIS 6657 (D.D.C.1964), affirmed by 346 F.2d 834, 120 U.S. App. D.C. 353, 1965 U.S. App. LEXIS 5604 (1965).

Leases.

Provision of lease requiring lessee to use basement of premises, in residential area, for commercial purposes as a nonconforming use under zoning laws was reasonable and enforceable. D.C. Code 1940, § 5-419. *Amos v. Cummings*, 67 A.2d 687, 1949 D.C. App. LEXIS 223 (Cr.App. 1949).

Lease executed in violation of order of rent administrator requiring filing of an application for determination of maximum rent ceiling before commencement of any future tenancy was not invalid so that lessee could be evicted for violating terms of lease requiring portion of premises to be used for commercial purposes as a nonconforming use under zoning laws in a residential area. D.C. Code 1940, §§ 5-419, 45-1601 to 45-1611. *Amos v. Cummings*, 67 A.2d 687, 1949 D.C. App. LEXIS 223 (Cr.App. 1949).

Nature of nonconforming use.

"Nonconforming use," within District of Columbia Code refers to permitted continued use of structure for purpose lawful under zoning at time of initiation of that use but not so under subsequent adopted changes in zoning. D.C. Code § 5-419. *Massachusetts Ave. Heights Citizens Asso. v. Embassy Corp.*, 433 F.2d 513, 1970 U.S. App. LEXIS 8137 (C.A.D.C. 1970).

Nonconforming use is an exception to generally applicable zoning requirement for previously lawful, existing use. *George Washington*

University v. District of Columbia Bd. of Zoning Adjustment, 429 A.2d 1342, 1981 D.C. App. LEXIS 254 (1981).

Mere lapse of time, without active pursuit of nonconforming use, does not deprive owner of the right to nonconforming use. *George Washington University v. District of Columbia Bd. of Zoning Adjustment*, 429 A.2d 1342, 1981 D.C. App. LEXIS 254 (1981).

Powers and duties of board and commission.

Regulations specifically allowed Department of Consumer and Regulatory Affairs (DCRA) to consult certain dictionary when determining whether former takeout restaurant was a “delicatessen,” as stated in certificate of occupancy, for purposes of whether non-conforming delicatessen use had been abandoned, regardless of whether DCRA in the past had consulted the dictionary to interpret whether a business owner was operating outside of a certificate of occupancy. *Gorgone v. D.C. Bd. of Zoning Adjustment*, 973 A.2d 692, 2009 D.C. App. LEXIS 179 (2009).

Board of zoning adjustment was not required, through a liberal interpretation of zoning regulations, to carve out a special exception so as to legalize a use which was presently and had been since its inception an illegal use where it was clear under facts disclosed by record that it would not be in harmony with general purpose and intent of zoning regulations to provide for strict regulation of nonconforming uses. D.C. Code § 5-419. *Bernstein v. District of Columbia Bd. of Zoning Adjustment*, 376 A.2d 816, 1977 D.C. App. LEXIS 353 (1977).

1938 District of Columbia Zoning Act providing, in effect, that lawful use of premises prior to adoption of any regulations under 1920 or 1938 District of Columbia Zoning Acts may be continued, although such use does not conform with provisions of such regulations, is binding on zoning commission, and a party who can show prior nonconforming use is entitled to a certificate of occupancy. Act March 1, 1920, §§ 1 et seq., 2, 41 Stat. 500; D.C. Code 1951, §§ 5-412 et seq., 5-419. *Hagans v. District of Columbia*, 97 A.2d 922, 1953 D.C. App. LEXIS 151 (Cr.App. 1953).

Regulations.

The “sufficiently complete information” required for grandfathering processing for occupancy conversion under applicable zoning regulation could not be equated with detailed

plans specifically required and incorporated by reference for grandfathering applications for building permits pursuant to another zoning regulation. *Page Associates v. District of Columbia*, 463 A.2d 649, 1983 D.C. App. LEXIS 406 (1983).

Word “permitted” within zoning regulation providing that nonconforming use may be changed to use which is permitted in most restrictive district in which the existing nonconforming use is “permitted,” should be given its ordinary and accepted meaning of “allowed,” either as a matter of right or by special exception. *Sheridan-Kalorama Neighborhood Council v. District of Columbia Bd. of Zoning Adjustment*, 411 A.2d 959, 1979 D.C. App. LEXIS 516 (1979).

Zoning regulation, which provides that when existing nonconforming use has been changed to conforming use, it shall not be changed back to nonconforming use, did not apply only where there had been nonconforming use of entire premises of two-story building which had been changed to conforming use throughout premises. *Lange v. District of Columbia Board of Zoning Adjustment*, 407 A.2d 1058, 1979 D.C. App. LEXIS 514 (1979).

If, under applicable zoning regulation, nonconforming use which had been changed to conforming use cannot be changed back to nonconforming use, it is not within intent of such regulation to allow illegal use which had been changed to conforming use to then be changed to nonconforming use, since to hold otherwise would be to allow landowner to benefit from illegal use of premises and in effect establish basis for valid nonconforming use on prior illegal use. *Lange v. District of Columbia Board of Zoning Adjustment*, 407 A.2d 1058, 1979 D.C. App. LEXIS 514 (1979).

Where premises were being used as one-family residence at time of adoption of zoning regulation precluding use of building in district as flat, premises which were built for flat use and used as such until some years prior to regulation could not be converted to flat use subsequent to regulation, even if right to flat use continued and became nonconforming because of regulation, in view of regulation to effect that once existing nonconforming use has been changed to conforming use, it shall not be changed back to nonconforming use. *Silverstone v. District of Columbia Board of Zoning Adjustment*, 372 A.2d 1286, 1977 D.C. App. LEXIS 462 (1977), vacated in part by, amended by 396 A.2d 992, 1979 D.C. App. LEXIS 287 (D.C. 1979).

§ 6-641.07. Board of Zoning Adjustment.

(a) A Board of Zoning Adjustment is hereby created which shall be composed of 1 member of the National Capital Planning Commission or a member of the

staff thereof to be designated in either case by such Commission and appointed by the Mayor of the District of Columbia; 1 member of the Zoning Commission or a member of the staff thereof to be designated in either case by such Commission and appointed by the Mayor of the District of Columbia; and 3 other members appointed by the Mayor of the District of Columbia with the advice and consent of the Council of the District of Columbia, each of whom shall have been a resident of the District of Columbia for at least 3 years immediately preceding his appointment and at least 1 of whom shall own his own home.

(b) The representative of the National Capital Planning Commission may be changed from time to time by such Commission in its discretion, and in case of a vacancy in the position by death, resignation, or other disability, a new representative shall be designated by the said Commission and appointed by the Mayor of the District of Columbia with the advice and consent of the Council of the District of Columbia to fill said vacancy. The representative of the Zoning Commission may be changed from time to time by such Commission in its discretion, and in case of a vacancy in the position by death, resignation, or other disability, a new representative shall be designated by the said Commission and appointed by the Mayor of the District of Columbia with the advice and consent of the Council of the District of Columbia to fill said vacancy. The terms of the 3 members designated by the Mayor of the District of Columbia shall be 3 years each, excepting that, in the case of the initial appointments, 1 shall be for a term of 1 year and 1 for a term of 2 years. In case of any vacancy in the position of any of the 3 members designated by the Mayor of the District of Columbia, the same shall be filled for the remainder of the term.

(c) The Zoning Commission may provide and specify in its zoning regulations general rules to govern the organization and procedure of the Board of Adjustment not inconsistent with the provisions of this subchapter, and the Board of Adjustment may adopt supplemental rules of procedure which shall be subject to the approval of the Zoning Commission after public hearing thereon as provided in § 6-641.03. The Board of Adjustment shall choose its Chairman and its other officers. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record.

(d) The regulations adopted by the Zoning Commission may provide that the Board of Adjustment may in appropriate cases and subject to appropriate principles, standards, rules, conditions, and safeguards set forth in the regulations, make special exceptions to the provisions of the zoning regulations in harmony with their general purpose and intent. The Commission may also authorize the Board of Adjustment to interpret the zoning maps and pass upon disputed questions of lot lines or district boundary lines or similar questions as they arise in the administration of the regulations.

(e) The Board of Adjustment shall not have the power to amend any regulation or map.

(f) Appeals to the Board of Adjustment may be taken by any person aggrieved, or organization authorized to represent such person, or by any officer or department of the government of the District of Columbia or the federal government affected, by any decision of the Inspector of Buildings granting or refusing a building permit or granting or withholding a certificate of occupancy, or any other administrative decision based in whole or in part upon any zoning regulation or map adopted under this subchapter. The Mayor of the District of Columbia may require and fix the fee to be charged for an appeal, which fee shall be paid, as directed by said Mayor, with the filing of the appeal; provided, that no citizens' association, or association created for civic purposes and not for profit shall be required to pay said fee. There shall be a public hearing on appeal.

(g) Upon appeals the Board of Adjustment shall have the following powers:

(1) To hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision, determination, or refusal made by the Inspector of Buildings or the Mayor of the District of Columbia or any other administrative officer or body in the carrying out or enforcement of any regulation adopted pursuant to this subchapter;

(2) To hear and decide, in accordance with the provisions of the regulations adopted by the Zoning Commission, requests for special exceptions or map interpretations or for decisions upon other special questions upon which such Board is required or authorized by the regulations to pass;

(3) Where, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under this subchapter would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of such property, to authorize, upon an appeal relating to such property, a variance from such strict application so as to relieve such difficulties or hardship, provided such relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the zoning regulations and map;

(4) In exercising the above-mentioned powers, the Board of Adjustment may, in conformity with the provisions of this subchapter, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, determination, or refusal appealed from or may make such order as may be necessary to carry out its decision or authorization, and to that end shall have all the powers of the officer or body from whom the appeal is taken.

(h) The concurring vote of not less than a full majority of the members of the Board shall be necessary for any decision or order.

(i) Nothing herein contained shall prohibit the Zoning Commission from providing by regulation for appeals to it from any action of the Board of Zoning Adjustment.

(June 20, 1938, 52 Stat. 799, ch. 534, § 8; Feb. 24, 1987, D.C. Law 6-191, § 2, 33 DCR 7939a.)

Cross references. — Board of Zoning Adjustment, chairman and members, compensation, see § 1-611.08.

Election campaigns, candidates, disclosure of financial interests, see § 1-1106.02.

Mayoral nomination of agency heads, review and approval of Council, see § 1-523.01.

Section references. — This section is referred to in §§ 6-641.12 and 6-641.13.

Prior Codifications. — 1981 Ed., § 5-424. 1973 Ed., § 5-420.

Legislative history of Law 6-191. — Law 6-191, the “Board of Zoning Adjustment Confirmation Amendment Act of 1986,” was introduced in Council and assigned Bill No. 6-493, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 5, 1986, and November 18, 1986, respectively. Signed by the Mayor of November 25, 1986, it was assigned Act No. 6-242 and transmitted to both Houses of Congress for its review.

Transfer of Functions. — “National Capital Planning Commission” was substituted for “National Capital Park and Planning Commission” in subsection (a) and in the first sentence in subsection (b) of this section in view of the Act of June 6, 1924, ch. 270, § 9, as added by the Act of July 19, 1952, 66 Stat. 790, ch. 949, § 1, which transferred the functions, powers, and duties of the National Capital Park and Planning Commission to the National Capital Planning Commission.

Delegation of Authority. — Delegation of authority under Zoning Act, see Mayor’s Order 83-165, June 7, 1983.

Editor’s notes. — Office of Inspector of Buildings abolished: Section 3 of the Act of December 20, 1944, 58 Stat. 822, ch. 611, transferred all the duties, powers, rights, and authority of the Inspector of Buildings of the District of Columbia to the Director of Inspection of the District of Columbia. The Department of Inspections was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 55 of the Board of Commissioners, dated June 30, 1953, and amended August 13, 1953, and December 17, 1953, established, under the direction and control of a Commissioner, a Department of Licenses and Inspections headed by a Director. The Order set out the purpose, organization, and functions of the new Department. The Order provided that all of the functions and positions of the following

named organizations were transferred to the new Department of Licenses and Inspections: The Department of Inspections including the Engineering Section, the Building Inspection Section, the Electrical Section, the Elevator Inspection Section, the Fire Safety Inspection Section, the Plumbing Inspection Section, the Smoke and Boiler Inspection Section, and the Administrative Section, and similarly the Department of Weights, Measures and Markets, the License Bureau, the License Board, the License Committee, the Board of Special Appeals, the Board for the Condemnation of Dangerous and Unsafe Buildings, and the Central Permit Bureau. The Order provided that in accordance with the provisions of Reorganization Plan No. 5 of 1952, the named organizations were abolished. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions vested in the Department of Licenses and Inspection by Reorganization Order No. 55 were transferred to the Director of the Department of Economic Development by Commissioner’s Order No. 69-96, dated March 7, 1969. The Department of Economic Development was replaced by Mayor’s Order No. 78-42, dated February 17, 1978, which Order established the Department of Licenses, Investigation and Inspections. The Department of Licenses, Investigation and Inspections was transferred to the Department of Consumer and Regulatory Affairs by Reorganization Plan No. 1 of 1983.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

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ANALYSIS

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Administrative procedure.

— Due process generally, administrative procedure.

That three Board of Zoning Adjustment members of District of Columbia, two of whom were subordinate government employees, were secretly informed that highly placed persons in government wanted Board to grant foreign government's application for exception to erect embassy building in residential zone denied fair hearing, rendered favorable decision void and required rehearing by new board created for that purpose. U.S. Const. art. 1, § 8; D.C. Code 1961, §§ 1-201, 1-202, 1-216, 1-218, 5-412, 5-413, 5-414, 5-420. *Jarrott v. Scrivener*, 225 F. Supp. 827, 1964 U.S. Dist. LEXIS 7576 (D.D.C.1964).

In performance of adjudicatory function by Board of Zoning Adjustment of District of Columbia, parties whose rights are involved are entitled to same fairness, impartiality and independence of judgment as are expected in court of law. D.C. Code 1961, §§ 1-216, 1-218, 5-412, 5-413, 5-414, 5-420. *Jarrott v. Scrivener*,

225 F. Supp. 827, 1964 U.S. Dist. LEXIS 7576 (D.D.C.1964).

Any error was not prejudicial to commercial tenant, as to Board of Zoning Adjustment (BZA) holding de novo evidentiary hearing instead of restricting its review to administrative record, and as to BZA allocating burden of proof to tenant instead of to Department of Consumer and Regulatory Affairs (DCRA), on BZA's review of DCRA's revocation of certificate of occupancy to use leased premises as automobile service center, where tenant had procedurally defaulted before DCRA by failing to make timely request for evidentiary hearing after receiving notice of DCRA's intent to revoke the certificate. *Kuri Bros. v. District of Columbia Bd. of Zoning Adjustment*, 891 A.2d 241, 2006 D.C. App. LEXIS 24 (2006).

Proceedings of board of zoning adjustment must be characterized by fundamental fairness, and board must be diligent to assure that its deliberations are attended by both the substance and appearance of impartiality. *Sheridan-Kalorama Neighborhood Council v. District of Columbia Bd. of Zoning Adjustment*, 341 A.2d 312, 1975 D.C. App. LEXIS 418 (1975).

— In general.

Owner seeking building permit to erect utility building adjacent to restaurant as required by Health Department should not have invoked hardship but clear statutory right to erect proposed structure and owner should have invoked statutory right to appeal from refusal of building inspector to issue building permit. D.C. Code 1961, § 5-420(1, 3). *Hot Shoppes, Inc. v. Clouser*, 231 F. Supp. 825, 1964 U.S. Dist. LEXIS 6657 (D.D.C.1964), affirmed by 346 F.2d 834, 120 U.S. App. D.C. 353, 1965 U.S. App. LEXIS 5604 (1965).

Failure of advisory neighborhood commission to appeal from concurrence letters by Department of Consumer and Regulatory Affairs (DCRA), even after notice, did not bar a subsequent appeal to board of zoning adjustment (BZA) to challenge the related building permit; the issuance of a building permit required the DCRA to comply with the public notice and other requirements set forth in the zoning regulations. *Bannum, Inc. v. D.C. Bd. of Zoning Adjustment*, 894 A.2d 423, 2006 D.C. App. LEXIS 133 (2006).

The timely filing of an appeal with the Board of Zoning Adjustment is mandatory and jurisdictional. *Sisson v. D.C. Bd. of Zoning Adjustment*, 805 A.2d 964, 2002 D.C. App. LEXIS 504 (2002).

At least in the absence of exceptional circumstances that substantially impair the ability of an aggrieved party to appeal and are outside the party's control, two months between notice of a decision and appeal therefrom are the limit of timeliness for an appeal to the Board of

Zoning Adjustment. *Sisson v. D.C. Bd. of Zoning Adjustment*, 805 A.2d 964, 2002 D.C. App. LEXIS 504 (2002).

A "timely appeal" to the Board of Zoning Adjustment is an appeal within a reasonable time. *Sisson v. D.C. Bd. of Zoning Adjustment*, 805 A.2d 964, 2002 D.C. App. LEXIS 504 (2002).

Requirement of rule of board of zoning adjustment (BZA) that an appeal of zoning decision be timely is jurisdictional. *Waste Mgmt. of Md. v. State Bd. of Zoning Adjustment*, 775 A.2d 1117, 2001 D.C. App. LEXIS 140 (2001).

Because the rules of the board of zoning adjustment (BZA) adopt no specific time limit on appeals, a standard of reasonableness is applied in determining whether an appeal is timely; reasonableness is a standard that requires due consideration of attendant facts and circumstances that legitimately may bear on the particular appellant's ability to seek review. *Waste Mgmt. of Md. v. State Bd. of Zoning Adjustment*, 775 A.2d 1117, 2001 D.C. App. LEXIS 140 (2001).

Although what constitutes reasonable time to appeal a zoning decision to the board of zoning adjustment (BZA) may depend on the circumstances, the question should not be decided on an ad hoc basis. *Waste Mgmt. of Md. v. State Bd. of Zoning Adjustment*, 775 A.2d 1117, 2001 D.C. App. LEXIS 140 (2001).

A reasonable time in which to appeal zoning decision is measured by the time that fairness dictates to enable an aggrieved party to evaluate the appropriateness of seeking review, to obtain the assistance of counsel, and to take the other steps necessary to proceed. *Waste Mgmt. of Md. v. State Bd. of Zoning Adjustment*, 775 A.2d 1117, 2001 D.C. App. LEXIS 140 (2001).

In the absence of exceptional circumstances substantially impairing the ability of an aggrieved party to appeal, that is, circumstances outside the party's control, two months between notice of a zoning decision and appeal therefrom is the limit of timeliness. *Waste Mgmt. of Md. v. State Bd. of Zoning Adjustment*, 775 A.2d 1117, 2001 D.C. App. LEXIS 140 (2001).

Property owner's decision to wait three years before filing appeal of decision denying application for certificate of occupancy to run a solid waste handling facility was unreasonable, and thus appeal was untimely; fact that owner chose to concentrate on avenues that reasonably may have appeared more promising than an appeal did not excuse its delay in noting an appeal, and owner could have taken an appeal and applied for a variance or a special exception simultaneously. *Waste Mgmt. of Md. v. State Bd. of Zoning Adjustment*, 775 A.2d 1117, 2001 D.C. App. LEXIS 140 (2001).

Issuance of a variance, which had lapsed, to construct second stage of office project could be considered in application for another variance

where reliance on eventual approval of the entire project was in good faith. D.C. Code § 5-420. *Monaco v. District of Columbia Board of Zoning Adjustment*, 407 A.2d 1091, 1979 D.C. App. LEXIS 473 (1979).

In ruling on supermarket's application for special exceptions to build parking lot in a residentially zoned area adjoining site of supermarket's proposed store, zoning board was not required to address testimony of commissioner of advisory neighborhood commission to effect that the parking lot was the "wrong kind of expansion" as such was merely an opinion which did not relate to any statutory criteria for granting a special exception. D.C. Code §§ 1-171i(d), 5-420. *Friendship Neighborhood Coalition v. District of Columbia Board of Zoning Adjustment*, 403 A.2d 291, 1979 D.C. App. LEXIS 394 (1979).

Where applicants submitted plans to Board of Zoning Adjustment which were based upon Zoning Commission's order and were virtually identical to those approved by Commission, and applicants purposely attempted to avoid changes in order to accelerate decision-making process, Board properly limited scope of its hearing to those matters provided in zoning regulations, and properly prevented petitioning citizens' association from reopening issues decided by the Zoning Commission. Act June 20, 1938, 52 Stat. 797; D.C. Code § 1-1509(b). *Dupont Circle Citizens Asso. v. District of Columbia Board of Zoning Adjustment*, 364 A.2d 610, 1976 D.C. App. LEXIS 372 (1976).

Under zoning regulation providing for further processing of planned unit development after it had been approved by Zoning Commission, consideration by Zoning Board of Adjustment was limited to matters mentioned in such regulation and Board could not go back and reconsider merits of case as ruled upon by Zoning Commission, nor could Board modify plans except in certain limited ways. Act June 20, 1938, 52 Stat. 797. *Dupont Circle Citizens Asso. v. District of Columbia Board of Zoning Adjustment*, 364 A.2d 610, 1976 D.C. App. LEXIS 372 (1976).

Statutory scheme for processing zoning exceptions was adhered to, and petitioners who sought judicial review of board of zoning adjustment action which granted a special exception were afforded a fair and impartial hearing which satisfied requirements of procedural due process where, inter alia, following indication by board member who was also a member of zoning commission, that commission would review denial of application, one board member dissented and expressed apprehension that improper pressure had been brought to bear from "upstairs," commission's order of remand disavowed any intention on commission's part influence independent decision-making process of board, and board's final order was based

upon criteria made applicable by zoning regulations. D.C. Code §§ 5-412, 5-420. *Sheridan-Kalorama Neighborhood Council v. District of Columbia Bd. of Zoning Adjustment*, 341 A.2d 312, 1975 D.C. App. LEXIS 418 (1975). *

— Notice and public hearing, administrative procedure.

Parties protesting granting of exception to permit erection of private school in area zoned as residential were entitled to be given official notice of exact plans that Board of Zoning Adjustment would ultimately consider and must be accorded full opportunity to present evidence. D.C. Code 1961, §§ 5-413, 5-420. *Robey v. Schwab*, 307 F.2d 198, 1962 U.S. App. LEXIS 4845 (C.A.D.C. 1962).

On an administrative hearing with respect to granting an exception to the zoning regulations to permit the erection of a gasoline station, fact that letter opposing the grant of the application from the capital planning commission was apparently based on hearsay and that neither its writer nor the member of the staff who made the investigation was present for cross-examination did not affect the admissibility of the letter, as would be case at a trial before the judicial tribunal. D.C. Code 1951, §§ 5-413, 5-420. *O'Boyle v. Coe*, 155 F.Supp. 581, 1957 U.S. Dist. LEXIS 2978 (D.D.C.1957).

A party such as an advisory neighborhood commission may wait to appeal to board of zoning adjustment (BZA) until the Department of Consumer and Regulatory Affairs (DCRA) takes official action by issuing building permit, regardless of whether or not that party has appealed (or tried to appeal) from any earlier interlocutory administrative decision; the issuance of a building permit requires the DCRA to comply with the public notice and other requirements set forth in the zoning regulations. *Bannum, Inc. v. D.C. Bd. of Zoning Adjustment*, 894 A.2d 423, 2006 D.C. App. LEXIS 133 (2006).

Better practice is for Board of Zoning Adjustment to serve all filed papers on each party to the adjudication, including proposed findings filed by a party to a contested case proceeding. D.C. Code § 5-420. *Monaco v. District of Columbia Board of Zoning Adjustment*, 407 A.2d 1091, 1979 D.C. App. LEXIS 473 (1979).

Since ample evidence in the record supported Board of Zoning Adjustment's grant of a use variance, due process was not violated even though the Board incorporated findings and conclusions prepared by applicant and not served on objector. D.C. Code § 5-420; U.S. Const. Amends. 5, 14. *Monaco v. District of Columbia Board of Zoning Adjustment*, 407 A.2d 1091, 1979 D.C. App. LEXIS 473 (1979).

Board of Zoning Adjustment violated neither its own rules nor Administrative Procedure Act by receiving variance applicant's proposed or-

der after the record was closed and issuing findings of fact and conclusions of law almost identical to those submitted by the applicants, without serving a copy of the proposed order on petitioner, as petitioner took advantage of his right to be present and submit rebuttal evidence and to cross-examine witnesses at contested case proceedings and matter submitted was not evidence but conclusions which might be drawn from the evidence. D.C. Code §§ 1-1509(b), 5-420; U.S. Const. Amends. 5, 14. *Monaco v. District of Columbia Board of Zoning Adjustment*, 407 A.2d 1091, 1979 D.C. App. LEXIS 473 (1979).

Statute providing that all "meetings" of Board of Zoning Adjustment shall be open to public requires public hearings, but does not require that conference at which Board considers and decides a case be public. D.C. Code § 5-420. *Dupont Circle Citizens Asso. v. District of Columbia Board of Zoning Adjustment*, 364 A.2d 610, 1976 D.C. App. LEXIS 372 (1976).

Where chairman had been present at hearings and had heard all testimony and did not designate someone else to vote for him but rather cast his vote in absentia and Board accepted it, presumption of regularity in Board decisions was not overcome. D.C. Code § 5-420. *Dupont Circle Citizens Asso. v. District of Columbia Board of Zoning Adjustment*, 364 A.2d 610, 1976 D.C. App. LEXIS 372 (1976).

Where decision of Board of Zoning Adjustment was made in executive session which was quasi-judicial action in which historically only voting members play role, Sunshine Act was not applicable. D.C. Code § 1-1503(a). *Dupont Circle Citizens Asso. v. District of Columbia Board of Zoning Adjustment*, 364 A.2d 610, 1976 D.C. App. LEXIS 372 (1976).

While channel for communication between zoning commission and board of zoning adjustment may become a conduit for pressures external to the zoning commission, which abuse might invalidate a board decision, such communications, if they occur should be made a part of the public record so that interested parties may comment. *Sheridan-Kalorama Neighborhood Council v. District of Columbia Bd. of Zoning Adjustment*, 341 A.2d 312, 1975 D.C. App. LEXIS 418 (1975).

Board and commission.

Relationship between zoning commission and board of zoning adjustment is different from that existing between trial and appellate courts, and from that which typically obtains between administrative law judges and bodies authorized to review their rulings; various tiers of customary review structure are independent of one another, but the board is not independent of the commission since statute creating board expressly provides that one board member

shall be a member of the commission or a member of the staff thereof which the commission designates, and that zoning commission member of the board serves, in effect, at pleasure of the commission. D.C. Code §§ 5-412, 5-420. *Sheridan-Kalorama Neighborhood Council v. District of Columbia Bd. of Zoning Adjustment*, 341 A.2d 312, 1975 D.C. App. LEXIS 418 (1975).

If member of zoning commission feels that board of zoning adjustment is usurping the policy-making function of the commission such member has every right to communicate his apprehension to his fellow commission members, and, by dint of statutory scheme which has placed a commission member or designee on the board, to make his views known to the board as well, and expressions of such sort are clearly foreseeable under the statutory plan. D.C. Code §§ 5-412, 5-420. *Sheridan-Kalorama Neighborhood Council v. District of Columbia Bd. of Zoning Adjustment*, 341 A.2d 312, 1975 D.C. App. LEXIS 418 (1975).

Person designated by zoning commission to represent commission on board of zoning adjustment is authorized to express zoning commission's concerns and to cast his vote with full knowledge of attitudes and policy positions of commission's members, but he is bound to cast his vote with the board based exclusively upon the record of proceedings before the board. D.C. Code §§ 5-412, 5-420. *Sheridan-Kalorama Neighborhood Council v. District of Columbia Bd. of Zoning Adjustment*, 341 A.2d 312, 1975 D.C. App. LEXIS 418 (1975).

There is no essential conflict between serving as zoning commission member of board of zoning adjustment, as permitted by statute, and casting a vote based exclusively upon the record before the board. D.C. Code §§ 1-1501 et seq., 5-412, 5-420. *Sheridan-Kalorama Neighborhood Council v. District of Columbia Bd. of Zoning Adjustment*, 341 A.2d 312, 1975 D.C. App. LEXIS 418 (1975).

Constitutional rights.

Conditions imposed by the board of zoning adjustment (BZA) on university's campus plan did not violate prohibition against discrimination in housing on account of matriculation; the zoning regulations have specified for more than eighty years that the number of students was a legitimate consideration, and the most recent comprehensive plan, enacted after the Human Rights Act, repeated the requirement to consider the number of students in neighborhoods off campus. *George Washington Univ. v. D.C. Bd. of Zoning Adjustment*, 831 A.2d 921, 2003 D.C. App. LEXIS 553 (2003).

The Human Rights Act applies to zoning and the activities of the board of zoning adjustment (BZA). *George Washington Univ. v. D.C. Bd. of*

Zoning Adjustment, 831 A.2d 921, 2003 D.C. App. LEXIS 553 (2003).

The board of zoning adjustment (BZA) is subject to the interdictions of the Human Rights Act, and the Act may be invoked against any application of the zoning regulations which discriminates, in purpose or effect, on grounds prohibited by the Act. *George Washington Univ. v. D.C. Bd. of Zoning Adjustment*, 831 A.2d 921, 2003 D.C. App. LEXIS 553 (2003).

University was not obliged to comply with conditions imposed by the board of zoning adjustment (BZA) after federal district court held them to be unconstitutional; it could treat that decision as controlling until date of Court of Appeals' mandate reversing the decision. *George Washington Univ. v. D.C. Bd. of Zoning Adjustment*, 831 A.2d 921, 2003 D.C. App. LEXIS 553 (2003).

A zoning statute which operates to deprive property owner of all beneficial use of his property would be unconstitutionally confiscatory. D.C. Code § 5-420(3). *Clerics of St. Viator, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 1974 D.C. App. LEXIS 222 (1974).

Evidentiary hearing.

When deciding appeal that challenged zoning agency's issuance of permit regarding construction of assisted living facility, board of zoning adjustment (BZA) was required to conduct evidentiary hearing regarding claim that addition of trash room increased facility's floor area ratio (FAR) in excess of that permitted in zoning regulations; claim involved question of fact. *Chiappella v. D.C. Bd. of Zoning Adjustment*, 954 A.2d 996, 2008 D.C. App. LEXIS 374 (2008).

Exceptions.

— In general.

Party aggrieved by classification of District of Columbia Zoning Commission may be able to seek special exception before Board of Zoning Adjustment. D.C. Code § 5-420. *Gerstenfeld v. Jett*, 374 F.2d 333, 1967 U.S. App. LEXIS 7504 (C.A.D.C. 1967).

Ultimate factors established by zoning regulation as prerequisites for allowance of special exception permitting construction of private school in residential district must be satisfied before Board of Zoning Adjustment may lawfully issue decision on merits of application. D.C. Code 1961, §§ 5-413, 5-420. *Robey v. Schwab*, 307 F.2d 198, 1962 U.S. App. LEXIS 4845 (C.A.D.C. 1962).

It was not intent of zoning regulation relating to authorization of District of Columbia Board of Zoning Adjustment to grant request for special exceptions in certain cases upon certain conditions, that appeal for exception must be granted if certain requirements are met. D.C. Code 1951, §§ 5-413 et seq., 5-420.

Hyman v. Coe, 146 F.Supp. 24, 1956 U.S. Dist. LEXIS 2370 (D.D.C.1956).

Upon appeal for exception, District of Columbia Board of Zoning Adjustment is to decide whether exception sought meets requirements of regulation; though this decision must result from exercise of sound discretion, that is, legal discretion, and must not be arbitrary, capricious or unreasonable. D.C. Code 1951, §§ 5-413 et seq., 5-420. *Hyman v. Coe*, 146 F.Supp. 24, 1956 U.S. Dist. LEXIS 2370 (D.D.C.1956).

Provision of zoning regulation authorizing District of Columbia Board of Zoning Adjustment to permit construction of office buildings and banks in certain residential area if certain conditions were satisfied, was not directive to board to preserve residential character of area, especially in view of fact that board had already allowed in area many changes which could not be said to have preserved residential character of area. D.C. Code 1951, §§ 5-413 et seq., 5-420. *Hyman v. Coe*, 146 F.Supp. 24, 1956 U.S. Dist. LEXIS 2370 (D.D.C.1956).

An "exception" in a zoning ordinance is one allowable where facts and conditions detailed in ordinance, as those upon which an exception may be permitted, are found to exist. D.C. Code 1951, §§ 5-413 et seq., 5-420. *Hyman v. Coe*, 146 F.Supp. 24, 1956 U.S. Dist. LEXIS 2370 (D.D.C.1956).

Where, pursuant to provision of zoning regulation authorizing District of Columbia Board of Zoning Adjustment to permit construction of office buildings and banks in certain residential area, owners of certain parcels of land in area had applied for and were granted permission to construct office buildings in area, in absence of evidence that conversion of plaintiffs' apartment building to office building would any more adversely affect present character and future development of neighborhood than did uses permitted by board of other properties in area, and in absence of evidence that use of plaintiff's property would render less desirable, for residential purposes, other property used as such in area, board's refusal to grant plaintiffs' appeal for exception was without reasonable foundation and constituted manifest abuse of discretion. D.C. Code 1951, §§ 5-413 et seq., 5-420. *Hyman v. Coe*, 146 F.Supp. 24, 1956 U.S. Dist. LEXIS 2370 (D.D.C.1956).

The applicant for a special exception has the burden of showing that the proposal complies with the regulation; but once that showing has been made, the board of zoning adjustment (BZA) ordinarily must grant the application. *President & Dirs. of Georgetown College v. D.C. Bd. of Zoning Adjustment*, 837 A.2d 58, 2003 D.C. App. LEXIS 696 (2003), remanded by 925 A.2d 585, 2007 D.C. App. LEXIS 326 (D.C. 2007).

Evidence that private school's buildings would occupy only seven percent of the 10.5-

acre property and that total impervious surface was only 27 percent, while the residential district had lot occupancy limit of 40 percent, and that measures could ameliorate impacts of noise, traffic, storm water run-off, and other objectionable effects, established that special exception for private school would be in harmony with general purpose and intent of residential zoning in the neighborhood. *Neighbors Against Foxhall Gridlock v. D.C. Bd. of Zoning Adjustment*, 792 A.2d 246, 2002 D.C. App. LEXIS 43 (2002).

Evidence that combined frontage of private-school property could actually provide 512 feet for combined taper, deceleration lane, and stacking lane for left turns, that Department of Public Works (DPW) would engage in "further refinements" during design process, and that other measures, such as staggered hours of school opening, mandatory car pooling by students, and shuttle bus service to public transit locations, would reduce expected impact of traffic, established that combined 474-foot minimum distance of taper, deceleration lane, and stacking lane for left turns was sufficient so that private school was not likely to become objectionable to adjoining and nearby properties because of traffic conditions, as element for special exception for private school in residential zone. *Neighbors Against Foxhall Gridlock v. D.C. Bd. of Zoning Adjustment*, 792 A.2d 246, 2002 D.C. App. LEXIS 43 (2002).

Testimony that proposed left-turn lane could accommodate stacking of as many as five cars, and that Department of Public Works (DPW) would engage in "further refinements" during design process to maximize safety in turn lane and at stop light and intersection, established that traffic impacts of proposed school could be ameliorated, in application to Board of Zoning Adjustment (BZA) for special exception for private school in residential zone. *Neighbors Against Foxhall Gridlock v. D.C. Bd. of Zoning Adjustment*, 792 A.2d 246, 2002 D.C. App. LEXIS 43 (2002).

Interpretation of relevant statutes and zoning regulations by the District of Columbia Board of Zoning Adjustment, which, in respect to application for "special exception" to allow the construction of a private school in single-family residential area, refused to consider the purposes set forth in statute as adjudicatory standards in making the "special exception" determination, and which refused to allow the introduction of factual evidence regarding the impact upon public schools in the area, was not plainly erroneous or inconsistent with the statutes or regulations. D.C. Code §§ 5-414, 5-420. *Rose Lees Hardy Home & School Assn. v. District of Columbia Bd. of Zoning Adjustment*, 343 A.2d 564, 1975 D.C. App. LEXIS 238 (1975).

— Powers of board, exceptions.

Whether exception should be granted for particular piece of property is within jurisdiction of

board of zoning adjustment, subject to certain limitations. D.C. Code 1961, §§ 5-412, 5-413, 5-420. *Capital Properties, Inc. v. Zoning Com. of District of Columbia*, 229 F. Supp. 255, 1964 U.S. Dist. LEXIS 7042 (D.D.C.1964).

Administrative discretion committed to the Board of Zoning Adjustment to grant exceptions to zoning regulations is not unlimited and it must be a sound legal discretion, and whether a dispensation should be granted is not a matter of grace, but must be determined on legal principles. D.C. Code 1951, §§ 5-413, 5-420. *O'Boyle v. Coe*, 155 F.Supp. 581, 1957 U.S. Dist. LEXIS 2978 (D.D.C.1957).

Board of zoning adjustment, in denying developer's application for a special exception to allow construction of 13 single family homes on a single subdivided lot located in tree and slope protection overlay district on bases that project would adversely affect use of neighboring property, and would likely have an adverse effect on present character and future development of the neighborhood, did not exceed its authority in doing so; regulatory requirements for both the overlay district and special exceptions clearly directed BZA to focus on potential adverse effects of proposed development on the present character and future development of the neighborhood, and on the use of neighboring property. *Dorchester Assocs. LLC v. D.C. Bd. of Zoning Adjustment*, 976 A.2d 200, 2009 D.C. App. LEXIS 257 (2009).

Decision by the board of zoning adjustment (BZA) to require university to report a violation of the code of conduct to student's parents or guardians to the extent permitted by law was arbitrary and capricious as condition of special exception and campus plan; the balancing necessary for student discipline was a responsibility more appropriately left to the university than to the BZA. *President & Dirs. of Georgetown College v. D.C. Bd. of Zoning Adjustment*, 837 A.2d 58, 2003 D.C. App. LEXIS 696 (2003), remanded by 925 A.2d 585, 2007 D.C. App. LEXIS 326 (D.C. 2007).

Decision by the board of zoning adjustment (BZA) to require two students and two faculty members on board to hear neighbors' complaints about students was unreasonable, arbitrary, and capricious as condition of special exception and campus plan; the BZA substituted its view for the university's on a matter of educational policy far removed from zoning considerations, and the university was powerless to alter the composition of the disciplinary hearing board without the zoning agency's consent. *President & Dirs. of Georgetown College v. D.C. Bd. of Zoning Adjustment*, 837 A.2d 58, 2003 D.C. App. LEXIS 696 (2003), remanded by 925 A.2d 585, 2007 D.C. App. LEXIS 326 (D.C. 2007).

Board of zoning adjustment (BZA) improperly required university, as condition of campus

plan and special exception, to monitor off-campus enforcement of various sanitation and housing regulations and to effectively take on the regulatory burden delegated to various agencies; the order exceeded what could reasonably be imposed on a private institution. *President & Dirs. of Georgetown College v. D.C. Bd. of Zoning Adjustment*, 837 A.2d 58, 2003 D.C. App. LEXIS 696 (2003), remanded by 925 A.2d 585, 2007 D.C. App. LEXIS 326 (D.C. 2007).

Implicit in the board of zoning adjustment's (BZA) power to grant special exceptions is the authority to place reasonable conditions upon such approval. *President & Dirs. of Georgetown College v. D.C. Bd. of Zoning Adjustment*, 837 A.2d 58, 2003 D.C. App. LEXIS 696 (2003), remanded by 925 A.2d 585, 2007 D.C. App. LEXIS 326 (D.C. 2007).

In evaluating requests for special exceptions, the board of zoning adjustment (BZA) is limited to a determination whether the exception sought meets the requirements of the particular regulation on which the application is based. *President & Dirs. of Georgetown College v. D.C. Bd. of Zoning Adjustment*, 837 A.2d 58, 2003 D.C. App. LEXIS 696 (2003), remanded by 925 A.2d 585, 2007 D.C. App. LEXIS 326 (D.C. 2007).

Board of zoning adjustment's (BZA) revised condition that prohibited a special exception or a permit for university to occupy or construct any on-campus building for nonresidential use without the board's express authorization, if any provision in the conditions on approval of campus plan was declared invalid, was invalid as chilling university's exercise of its fundamental right to seek judicial redress against allegedly arbitrary agency action. *George Washington Univ. v. D.C. Bd. of Zoning Adjustment*, 831 A.2d 921, 2003 D.C. App. LEXIS 553 (2003).

In evaluating requests for special exceptions to zoning regulations, the Board of Zoning Adjustment (BZA) is limited to a determination of whether the applicant meets the requirements of the exception sought; the applicant has the burden of showing that the proposal complies with the regulation, but once that showing has been made, the BZA ordinarily must grant the application. *Georgetown Residents Alliance v. D.C. Bd. of Zoning Adjustment*, 802 A.2d 359, 2002 D.C. App. LEXIS 374 (2002).

Board of zoning adjustment (BZA) may grant requests for special exceptions where the proposed use will be in harmony with the general purpose and intent of the zoning regulations. *Waste Mgmt. of Md. v. State Bd. of Zoning Adjustment*, 775 A.2d 1117, 2001 D.C. App. LEXIS 140 (2001).

Board of Zoning Adjustment lacked authority to grant application for special exception to

permit conversion of chancery into law offices and apartments. D.C. Code § 5-420. *Sheridan-Kalorama Neighborhood Council v. District of Columbia Bd. of Zoning Adjustment*, 411 A.2d 959, 1979 D.C. App. LEXIS 516 (1979).

Sole authority for any amendment of zoning regulations relating to parking was in zoning commission, not Board of Zoning Adjustment. D.C. Code §§ 5-413, 5-420. *Citizens Asso. of Georgetown, Inc. v. District of Columbia Board of Zoning Adjustment*, 337 A.2d 495, 1975 D.C. App. LEXIS 377 (1975).

Board of Zoning Adjustment is without direct or indirect power to amend a zoning map and regulations. D.C. Code § 5-420. *Taylor v. District of Columbia Bd. of Zoning Adjustment*, 308 A.2d 230, 1973 D.C. App. LEXIS 323 (1973).

Findings and determination.

"Full reasons" within section of zoning regulation to effect that full reasons for decisions of Board of Zoning Adjustment shall be entered in minutes book means that, in order to support its conclusions, board shall make basic findings of fact regarding special exceptions and, although findings need not amount to exhaustive summation of all evidence, board must state facts which persuaded it to arrive at its decision. D.C. Code 1961, §§ 5-413, 5-420. *Robey v. Schwab*, 307 F.2d 198, 1962 U.S. App. LEXIS 4845 (C.A.D.C. 1962).

Order of Board of Zoning Adjustment containing little more than reiteration of language of regulations insofar as they set forth conditions necessary for allowance of special exception to permit erection of private school in area zoned as residential was insufficient under zoning regulations requiring that full reasons for Board's decisions be entered in minutes book and case must be remanded to Board for findings of fact. D.C. Code 1961, §§ 5-413, 5-420. *Robey v. Schwab*, 307 F.2d 198, 1962 U.S. App. LEXIS 4845 (C.A.D.C. 1962).

Evidence supported conclusion that advisory neighborhood commission was affected by building permits for community correction center in community represented by the commission and had standing to appeal to board of zoning adjustment (BZA); documents and testimony showed that the center would have a particularly negative effect on the community represented by the commission. *Bannum, Inc. v. D.C. Bd. of Zoning Adjustment*, 894 A.2d 423, 2006 D.C. App. LEXIS 133 (2006).

Board of zoning adjustment (BZA) was not required to consider the arguments of adjoining and nearby neighbors as "material" to application for special exception to operate a middle school in a residential district; municipal regulations included no mandate that the BZA consider the views of adjoining and nearby neighbors as "material" nor does it require the BZA to address those views with particularity.

Lovendusky v. D.C. Bd. of Zoning Adjustment, 852 A.2d 927, 2004 D.C. App. LEXIS 304 (2004).

Board of zoning adjustment (BZA) satisfied its statutory duty with respect to its treatment of recommendations, issues, and concerns of advisory neighborhood commission (ANC) affected by application for special exception to applicant to operate a middle school in a residential district; BZA explicitly addressed and made specific findings and conclusions with respect to each issue and concern the ANC raised to BZA's attention, and 20 conditions attached to special exception largely reflect the issues and concerns raised by ANC. *Lovendusky v. D.C. Bd. of Zoning Adjustment*, 852 A.2d 927, 2004 D.C. App. LEXIS 304 (2004).

The Board of Zoning Adjustment (BZA) and the zoning administrator may not, in the interests of efficient administration, interpret defined uses in the zoning regulations to encompass other uses that are functionally comparable, even if they are outside the definition. *Chagnon v. D.C. Bd. of Zoning Adjustment*, 844 A.2d 345, 2004 D.C. App. LEXIS 66 (2004).

Board of zoning adjustment (BZA) ordinarily must grant university's application for a campus plan, if proposed use is consistent with the comprehensive plan and is not likely to become objectionable to users of neighboring property. *George Washington Univ. v. D.C. Bd. of Zoning Adjustment*, 831 A.2d 921, 2003 D.C. App. LEXIS 553 (2003).

Board of zoning adjustment (BZA) ruling on university's campus plan was entitled to rely on the District of Columbia's comprehensive plan, testimony of residents near the campus, and reports by the Office of Planning and a neighborhood organization. *George Washington Univ. v. D.C. Bd. of Zoning Adjustment*, 831 A.2d 921, 2003 D.C. App. LEXIS 553 (2003).

Board of zoning adjustment (BZA) ruling on university's campus plan was free to accord appropriate consideration to the testimony of witnesses at its own hearings and to credit the complaints of residents regarding university expansion and the problems that the expansion allegedly caused. *George Washington Univ. v. D.C. Bd. of Zoning Adjustment*, 831 A.2d 921, 2003 D.C. App. LEXIS 553 (2003).

Decision by board of zoning adjustment (BZA) requiring university to make 5600 beds and a bed for each student above 8000 available on campus by 2006 was not arbitrary and capricious; 5600 was 70% of the base undergraduate population at the time of the board's hearings, the university had a long-term goal of housing 80% of the undergraduate population on campus, and the requirement of one additional on-campus bed for every undergraduate over the base population of 8000 reasonably

accommodated the reality of a finite neighborhood off campus and the ineffectiveness of an across-the-board 70% requirement if undergraduate enrollment were to increase dramatically. *George Washington Univ. v. D.C. Bd. of Zoning Adjustment*, 831 A.2d 921, 2003 D.C. App. LEXIS 553 (2003).

Board of zoning adjustment's (BZA) moratorium on non-residential development on university campus if the university failed to provide additional on-campus beds as required was not arbitrary and capricious; if this sanction for noncompliance with the BZA's orders were not available, the other provisions of BZA's revised condition for approval of campus plan would, as a practical matter, be unenforceable and largely hortatory. *George Washington Univ. v. D.C. Bd. of Zoning Adjustment*, 831 A.2d 921, 2003 D.C. App. LEXIS 553 (2003).

Condition imposed by board of zoning adjustment (BZA) requiring university to obtain approximately 1500 beds on campus or outside of adjacent neighborhoods in a relatively brief period of time was arbitrary and capricious and an impermissible exercise of the board's authority; there was no adequate record support for the BZA's finding that doing so was possible, another condition required university to provide the beds on campus by 2006, the board did not discuss additional traffic and parking problems of student commuters out of the neighborhoods, and the order indirectly encroached on powers reserved to the zoning commission. *George Washington Univ. v. D.C. Bd. of Zoning Adjustment*, 831 A.2d 921, 2003 D.C. App. LEXIS 553 (2003).

Condition imposed by board of zoning adjustment (BZA) requiring university to house at least 70% of all undergraduates on campus by 2006 was not de facto or stealth rezoning; the requirement was consistent with the District of Columbia's comprehensive plan and with the university's own announced intentions. *George Washington Univ. v. D.C. Bd. of Zoning Adjustment*, 831 A.2d 921, 2003 D.C. App. LEXIS 553 (2003).

The Board of Zoning Adjustment (BZA) must elaborate, with precision, its response to advisory neighborhood commission (ANC) issues and concerns, and articulate why the particular ANC itself, given its vantage point, does or does not offer persuasive advice under the circumstances. *Watergate W, Inc. v. D.C. Bd. of Zoning Adjustment*, 815 A.2d 762, 2003 D.C. App. LEXIS 18 (2003).

Neighbors were not prejudiced by failure of Board of Zoning Adjustment (BZA) to tape record the direct examination and cross-examination of their traffic expert at pre-deliberation hearing for which two of five Board members were absent, and thus, absent Board members were not disqualified from voting on special exception for private school in residen-

tial zone; by the time Board began its deliberations, expert's testimony had been superseded in importance by Department of Public Works' (DPW) revised study of traffic impacts, and Board received multiple written reports addressing traffic impacts from experts representing both sides, as well as from independent experts at DPW and Office of Planning (OP). *Neighbors Against Foxhall Gridlock v. D.C. Bd. of Zoning Adjustment*, 792 A.2d 246, 2002 D.C. App. LEXIS 43 (2002).

Where board of zoning adjustment's reasons for denying area variance merely quoted pertinent standards in subsection of code without explaining how proposed variance would violate such standards, except for one terse sentence dealing with property owner's alleged self-imposition of hardship, board's conclusions and findings were insufficient. D.C. Code §§ 1-1509(e), 5-420(3). *A. L. W., Inc. v. District of Columbia Bd. of Zoning Adjustment*, 338 A.2d 428, 1975 D.C. App. LEXIS 392 (1975).

Decision of board of zoning adjustment on application for special exception must not be controlled by head count as in a political election, but by evidence adduced as it relates to requirements for special exception. D.C. Code §§ 1-1501 et seq., 1-1510, 5-414. *Dietrich v. District of Columbia Board of Zoning Adjustment*, 320 A.2d 282, 1974 D.C. App. LEXIS 217 (1974).

Consideration by Board of Zoning Adjustment of costs of converting to residential use building for which petitioner sought variance from a C-1 conforming use to a C-2 use did not obviate necessity for findings required by zoning statute. D.C. Code § 5-420(3). *Salsbery v. District of Columbia Bd. of Zoning Adjustment*, 318 A.2d 894, 1974 D.C. App. LEXIS 418 (1974).

Findings of Board of Zoning Adjustment in denying application for variance from a C-1 (neighborhood shopping) nonconforming use to a C-2 (community business center) use were insufficient for reviewing court to discern the necessary rational basis for the decision. D.C. Code §§ 1-1501 et seq., 5-420(3). *Salsbery v. District of Columbia Bd. of Zoning Adjustment*, 318 A.2d 894, 1974 D.C. App. LEXIS 418 (1974).

In general.

Purpose of zoning is to create districts, large or small, and not to zone or rezone specific property. D.C. Code 1961, §§ 5-412, 5-413, 5-420. *Capital Properties, Inc. v. Zoning Com. of District of Columbia*, 229 F. Supp. 255, 1964 U.S. Dist. LEXIS 7042 (D.D.C.1964).

Board of zoning adjustment (BZA), not the zoning administrator, has final administrative responsibility to interpret the zoning regulations. *Bannum, Inc. v. D.C. Bd. of Zoning Ad-*

justment, 894 A.2d 423, 2006 D.C. App. LEXIS 133 (2006).

Injunction.

Where owners and operators of substantial rental property in close proximity to proposed community correctional center brought action for a preliminary and permanent injunction barring District of Columbia officials from using the premises as such a center on ground that the center was not a rooming house under District of Columbia zoning regulations, it was improper to determine merits and to issue a permanent injunction without requiring recourse under doctrine of primary jurisdiction to administrative remedies available to parties that would have provided guidance of administrative expertise which the courts should require. Zoning Act of June 20, 1938, 52 Stat. 797; D.C. Code §§ 5-412, 5-413, 5-420. *Browner Bldg., Inc. v. Shehyn*, 442 F.2d 847, 1971 U.S. App. LEXIS 11721 (C.A.D.C. 1971).

Judicial review.

— In general.

Attacks on certificates of occupancy belong, in first instance, not before courts, but before administrator of the District of Columbia Board of Zoning Adjustment. D.C. Code 1981, § 5-424(f); D.C. Mun. Regs. title 11, § 3200.2; title 14, § 1406 et seq. *Burka v. Aetna Life Ins. Co.*, 945 F. Supp. 313, 1996 U.S. Dist. LEXIS 16952 (1996).

An action to review a decision of the Board of Zoning Adjustment differs from an action to review an order of the Zoning Commission in that latter suit involves the question of whether the property has been taken without due process of law. D.C. Code 1951, §§ 5-413, 5-420. *O'Boyle v. Coe*, 155 F. Supp. 581, 1957 U.S. Dist. LEXIS 2978 (D.D.C. 1957).

Grant of use variance permitting additional rooms on property for transient occupancy, rather than limiting operation to eight rooms, with minimum length of occupancy of 90 days, would not impair integrity of zone plan, where there would be little difference between external traffic and noise produced by 12 rooms and those produced by eight. *Oakland Condo. v. D.C. Bd. of Zoning Adjustment*, 22 A.3d 748, 2011 D.C. App. LEXIS 291 (2011).

Absent showing that applicant failed to carry out its responsibilities with respect to the community liaison committee or that board of zoning adjustment (BZA) made the requisite findings to trigger condition providing for termination of special exception to operate a middle school in a residential district, issue of enforcement of conditions was not ripe for consideration by the Court of Appeals. *Lovendusky v. D.C. Bd. of Zoning Adjustment*, 852 A.2d 927, 2004 D.C. App. LEXIS 304 (2004).

The Court of Appeals has a duty to reject an interpretation by the Board of Zoning Adjustment (BZA) which contradicts the plain language of the regulation itself. *Chagnon v. D.C. Bd. of Zoning Adjustment*, 844 A.2d 345, 2004 D.C. App. LEXIS 66 (2004).

Appropriate remedy for legally improper conditions that board of zoning adjustment (BZA) imposed on university campus plan was remand to the BZA, rather than an order to approve the plan without the conditions. *President & Dirs. of Georgetown College v. D.C. Bd. of Zoning Adjustment*, 837 A.2d 58, 2003 D.C. App. LEXIS 696 (2003), remanded by 925 A.2d 585, 2007 D.C. App. LEXIS 326 (D.C. 2007).

Remand was required for board of zoning adjustment (BZA) to clarify campus parking as condition of special exception and campus plan; the number could not reasonably be both a maximum and a minimum. *President & Dirs. of Georgetown College v. D.C. Bd. of Zoning Adjustment*, 837 A.2d 58, 2003 D.C. App. LEXIS 696 (2003), remanded by 925 A.2d 585, 2007 D.C. App. LEXIS 326 (D.C. 2007).

University failed to preserve its claim that the board of zoning adjustment (BZA) lacked authority to impose student enrollment cap as condition for special exception and university plan; the university had asked the BZA, presumably for tactical reasons, first to maintain the 1990 cap and then, upon completion of a residence hall, to impose a different cap, and even though it claimed that it submitted the proposed order with the cap to be accepted or rejected as a whole, it could have made that position clear and was obliged to say loudly and clearly if it believed that the BZA lacked authority to impose a cap. *President & Dirs. of Georgetown College v. D.C. Bd. of Zoning Adjustment*, 837 A.2d 58, 2003 D.C. App. LEXIS 696 (2003), remanded by 925 A.2d 585, 2007 D.C. App. LEXIS 326 (D.C. 2007).

Reasonableness standard imposes a duty on parties appealing zoning decision to act with diligence and prudent dispatch in protecting their own interests through the appellate process. *Waste Mgmt. of Md. v. State Bd. of Zoning Adjustment*, 775 A.2d 1117, 2001 D.C. App. LEXIS 140 (2001).

— Record on appeal, judicial review.

Ordinarily, review by court of decision of Board of Zoning Adjustment of District of Columbia would be limited to Board's record of proceedings before it, and court would not be permitted to hear evidence dehors that record. D.C. Code 1961, §§ 1-216, 1-218, 5-412, 5-413, 5-414, 5-420. *Jarrott v. Scrivener*, 225 F. Supp. 827, 1964 U.S. Dist. LEXIS 7576 (D.D.C. 1964).

Where integrity of decision of Board of Zoning Adjustment of District of Columbia was questioned, court could go outside Board's record and receive independent evidence. D.C.

Code 1961, §§ 1-216, 1-218, 5-412, 5-413, 5-414, 5-420. *Jarrott v. Scrivener*, 225 F. Supp. 827, 1964 U.S. Dist. LEXIS 7576 (D.D.C1964).

In action against the Board of Zoning Adjustment to set aside an order denying an application for permission to establish a gasoline service station, judicial review must be had solely on the record before the Board and evidence not introduced before the Board but presented to the court in the first instance could not be considered. D.C. Code 1951, §§ 5-413, 5-420. *O'Boyle v. Coe*, 155 F.Supp. 581, 1957 U.S. Dist. LEXIS 2978 (D.D.C1957).

University failed to preserve challenge to board of zoning adjustment's (BZA) cap on overall student enrollment and the number of full-time equivalent students, as well as the maximum levels of faculty and staff; the university never challenged the condition before the board. *George Washington Univ. v. D.C. Bd. of Zoning Adjustment*, 831 A.2d 921, 2003 D.C. App. LEXIS 553 (2003).

] 34. *George Washington Univ. v. D.C. Bd. of Zoning Adjustment*, 831 A.2d 921, 2003 D.C. App. LEXIS 553 (2003).

Order of Zoning Board of Adjustment denying building permit would be vacated and case remanded to Board for further proceedings, where Board and, at least initially, applicant proceeded as if applicant were seeking only variance and applicant should have invoked not hardship but clear statutory right to erect proposed structure under Code. D.C. Code 1961, § 5-420(1, 3). *Hot Shoppes, Inc. v. Clouser*, 231 F. Supp. 825, 1964 U.S. Dist. LEXIS 6657 (D.D.C1964), affirmed by 346 F.2d 834, 120 U.S. App. D.C. 353, 1965 U.S. App. LEXIS 5604 (1965).

While the Board of Zoning Adjustment (BZA) is not required to defer to an advisory neighborhood commission's (ANC's) views, failure to address ANC concerns with particularity is grounds for a remand. *Watergate W., Inc. v. D.C. Bd. of Zoning Adjustment*, 815 A.2d 762, 2003 D.C. App. LEXIS 18 (2003).

Scope of review of decision of Board of Zoning Adjustment which denied variance would not permit court to grant variance sought; the proper disposition because of insufficient findings was remand. D.C. Code § 5-420(3). *Salsbery v. District of Columbia Bd. of Zoning Adjustment*, 318 A.2d 894, 1974 D.C. App. LEXIS 418 (1974).

— Scope of review, judicial review.

Scope of judicial review of actions of zoning commission is very narrow, and court may not set aside action of commission merely because court might have decided other way had court been member of commission. D.C. Code 1961, §§ 5-412, 5-413, 5-420. *Capital Properties, Inc. v. Zoning Com. of District of Columbia*, 229 F.

Supp. 255, 1964 U.S. Dist. LEXIS 7042 (D.D.C1964).

Whether mistakes were made in locating boundaries of sub-class of commercial district and whether, on change of character of neighborhood, the south side of a street should have been transferred from C-2 to C-3-B classification were matters of discretion for zoning commission, where questions of degree were involved and determinations of commission were not arbitrary. D.C. Code 1961, §§ 5-412, 5-413, 5-420. *Capital Properties, Inc. v. Zoning Com. of District of Columbia*, 229 F. Supp. 255, 1964 U.S. Dist. LEXIS 7042 (D.D.C1964).

Generally, correctness or incorrectness of decision of Board of Zoning Adjustment of District of Columbia is not one for judicial review if there is substantial evidence to support it and parties have been accorded due process of law. D.C. Code 1961, §§ 1-216, 1-218, 5-412, 5-413, 5-414, 5-420. *Jarrott v. Scrivener*, 225 F. Supp. 827, 1964 U.S. Dist. LEXIS 7576 (D.D.C1964).

Advisory neighborhood commission's delay in appealing to board of zoning adjustment (BZA) until seven days after issuance of revised building permit was not unreasonable, did not prejudice permit applicant, and, therefore, did not bar appeal on laches theory; the applicant incurred most costs to renovate the property immediately after obtaining permit, knew or should have known that other parties could appeal from the issuance of the permit within sixty days, and could not assume that its permit was valid until expiration of appeal period. *Bannum, Inc. v. D.C. Bd. of Zoning Adjustment*, 894 A.2d 423, 2006 D.C. App. LEXIS 133 (2006).

In the absence of exceptional circumstances, the Court of Appeals will not entertain contentions not raised before the board of zoning adjustment (BZA). *President & Dirs. of Georgetown College v. D.C. Bd. of Zoning Adjustment*, 837 A.2d 58, 2003 D.C. App. LEXIS 696 (2003), remanded by 925 A.2d 585, 2007 D.C. App. LEXIS 326 (D.C. 2007).

Court of Appeals' review of the board of zoning adjustment's (BZA) decision, while deferential, was substantially broader than review of the decision for violation of substantive due process. *George Washington Univ. v. D.C. Bd. of Zoning Adjustment*, 831 A.2d 921, 2003 D.C. App. LEXIS 553 (2003).

The Court of Appeals would address validity of board of zoning adjustment's (BZA) condition requiring university to provide at least 5600 undergraduate beds no later than August 31, 2002, even though the issue was arguably moot; if Court failed to decide the issue, the same error could well be repeated in future years. *George Washington Univ. v. D.C. Bd. of Zoning Adjustment*, 831 A.2d 921, 2003 D.C. App. LEXIS 553 (2003).

If the Board of Zoning Adjustment (BZA) is interpreting its own governing statute and regulations, the Court of Appeals gives its construction particular deference. *Watergate W., Inc. v. D.C. Bd. of Zoning Adjustment*, 815 A.2d 762, 2003 D.C. App. LEXIS 18 (2003).

When the Board of Zoning Adjustment's (BZA's) decision turns on its interpretation of a regulation that agency is charged with implementing, that interpretation must be upheld unless it is plainly erroneous or inconsistent with the regulation. *Watergate W., Inc. v. D.C. Bd. of Zoning Adjustment*, 815 A.2d 762, 2003 D.C. App. LEXIS 18 (2003).

On questions relating to the interpretation of zoning regulations, the Court of Appeals' review is deferential, upholding such interpretations unless they are plainly erroneous or inconsistent with the zoning regulation; accordingly, the Court must uphold a decision of the Board of Zoning Adjustment (BZA) if it rationally flows from findings of fact supported by substantial evidence in the record as a whole. *Georgetown Residents Alliance v. D.C. Bd. of Zoning Adjustment*, 802 A.2d 359, 2002 D.C. App. LEXIS 374 (2002).

The Court of Appeals will uphold the Board of Zoning Adjustment's (BZA's) interpretation of its regulations so long as it is not plainly erroneous or inconsistent with the zoning regulations. *Georgetown Residents Alliance v. D.C. Bd. of Zoning Adjustment*, 802 A.2d 359, 2002 D.C. App. LEXIS 374 (2002).

— Standard of review, judicial review.

In performing its function of judicial review, the district court of the District of Columbia considers the zoning board's findings and determinations and will not substitute its judgment so long as there is a rational basis for the board's opinion. *Zoning Act of June 20, 1938*, 52 Stat. 797; D.C. Code §§ 5-412, 5-413, 5-420. *Browner Bldg., Inc. v. Shehyn*, 442 F.2d 847, 1971 U.S. App. LEXIS 11721 (C.A.D.C. 1971).

Greater discretion is vested in Board of Zoning Adjustment in granting or denying variance than there is in determining whether error had been committed by any official such as inspector of buildings, particularly where alleged error was of statutory interpretation. D.C. Code 1961, §§ 5-420, 5-422; Fed. Rules Civ. Proc. rule 8(f), 18 U.S.C. Hot Shoppes, Inc. v. Clouser, 231 F. Supp. 825, 1964 U.S. Dist. LEXIS 6657 (D.D.C.1964), affirmed by 346 F.2d 834, 120 U.S. App. D.C. 353, 1965 U.S. App. LEXIS 5604 (1965).

Where zoning regulation formulated certain standards to guide the actions of the Board of Zoning Adjustment in granting exceptions to zoning regulations, court could set aside an action of the board in denying an exception to the regulations if it found that its decision was "arbitrary or capricious"; the quoted phrase

having no opprobrious connotation but in technical legal significance meaning an administrative action not supported by evidence, or lacking a rational basis. D.C. Code 1951, §§ 5-413, 5-420. *O'Boyle v. Coe*, 155 F.Supp. 581, 1957 U.S. Dist. LEXIS 2978 (D.D.C.1957).

Where decision of District of Columbia Zoning Adjustment Board, upon review, is clearly unreasonable and arbitrary, it will be set aside; court is not bound by arbitrary or capricious action of board, or where there has been a manifest abuse of discretion. D.C. Code 1951, §§ 5-413 et seq., 5-420. *Hyman v. Coe*, 146 F.Supp. 24, 1956 U.S. Dist. LEXIS 2370 (D.D.C.1956).

Decisions of District of Columbia Zoning Adjustment Board are discretionary and should not be reversed by courts unless clearly arbitrary and unreasonable. D.C. Code 1951, §§ 5-413 et seq., 5-420. *Hyman v. Coe*, 146 F.Supp. 24, 1956 U.S. Dist. LEXIS 2370 (D.D.C.1956).

Each of the following zoning-related decisions is separately appealable: (1) those granting or refusing building permits; (2) those granting or withholding certificates of occupancy; and (3) other administrative decisions. *Bannum, Inc. v. D.C. Bd. of Zoning Adjustment*, 894 A.2d 423, 2006 D.C. App. LEXIS 133 (2006).

The Court of Appeals will not reverse the conclusions of the board of zoning adjustment (BZA) unless they are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. *Lovendusky v. D.C. Bd. of Zoning Adjustment*, 852 A.2d 927, 2004 D.C. App. LEXIS 304 (2004).

Generally, Court of Appeals' review of the factual determinations of the board of zoning adjustment (BZA) is deferential. *Lovendusky v. D.C. Bd. of Zoning Adjustment*, 852 A.2d 927, 2004 D.C. App. LEXIS 304 (2004).

The Court of Appeals must uphold the validity of the findings of the board of zoning adjustment (BZA) if they are supported by and in accordance with reliable, probative, and substantial evidence, which is relevant evidence which a reasonable trier of fact would find adequate to support a conclusion. *Lovendusky v. D.C. Bd. of Zoning Adjustment*, 852 A.2d 927, 2004 D.C. App. LEXIS 304 (2004).

When the Board of Zoning Adjustment's (BZA) decision turns on its interpretation of a regulation that agency is charged with implementing, that interpretation must be upheld unless it is plainly erroneous or inconsistent with the regulation. *Chagnon v. D.C. Bd. of Zoning Adjustment*, 844 A.2d 345, 2004 D.C. App. LEXIS 66 (2004).

The Court of Appeals must uphold decisions made by the Board of Zoning Adjustment (BZA) if they rationally flow from findings of fact supported by substantial evidence in the record as a whole. *Watergate W., Inc. v. D.C. Bd. of*

Zoning Adjustment, 815 A.2d 762, 2003 D.C. App. LEXIS 18 (2003).

The Court of Appeals may not substitute its own judgment for that of the Board of Zoning Adjustment (BZA) so long as there is a rational basis for the BZA's decision. *Watergate W., Inc. v. D.C. Bd. of Zoning Adjustment*, 815 A.2d 762, 2003 D.C. App. LEXIS 18 (2003).

The Board of Zoning Adjustment's judgment is entitled to additional deference where it is interpreting its own internal rule of procedure, rather than the zoning regulations. *Sisson v. D.C. Bd. of Zoning Adjustment*, 805 A.2d 964, 2002 D.C. App. LEXIS 504 (2002).

Appellate review of a decision of the Board of Zoning Adjustment (BZA) is limited to a determination of whether the decision is arbitrary, capricious, or otherwise not in accordance with the law. *Georgetown Residents Alliance v. D.C. Bd. of Zoning Adjustment*, 802 A.2d 359, 2002 D.C. App. LEXIS 374 (2002).

Appellate court's review of a board of zoning adjustment (BZA) decision that an appeal of zoning decision was not "timely" is deferential, and court will uphold the agency's interpretation of its own procedural regulation unless that interpretation is clearly wrong. *Waste Mgmt. of Md. v. State Bd. of Zoning Adjustment*, 775 A.2d 1117, 2001 D.C. App. LEXIS 140 (2001).

Review of Board of Zoning Adjustment's finding that proposed building addition, for which use variance was sought, did not have a detrimental impact on neighborhood or zone plan was limited to whether the findings were supported by reliable, probative and substantial evidence in the record as a whole and whether the Board's conclusion flowed rationally from such findings. D.C. Code § 5-420. *Monaco v. District of Columbia Board of Zoning Adjustment*, 407 A.2d 1091, 1979 D.C. App. LEXIS 473 (1979).

Scope of inquiry on judicial review of a decision of Board of Zoning Adjustment is limited to whether findings made are supported by and in accordance with reliable, probative, and substantial evidence in whole administrative record and whether conclusions of Board flow rationally from those findings. D.C. Code §§ 1-1509(e), 5-420(3). *Russell v. District of Columbia Board of Zoning Adjustment*, 402 A.2d 1231, 1979 D.C. App. LEXIS 381 (1979).

A decision of Board of Zoning Adjustment must be affirmed when it follows as a matter of law from facts stated and those facts have substantial support in evidence. D.C. Code §§ 1-1509(e), 5-420(3). *Russell v. District of Columbia Board of Zoning Adjustment*, 402 A.2d 1231, 1979 D.C. App. LEXIS 381 (1979).

Where factual findings of Board of Zoning Adjustment on existence or not of "practical difficulties" in area variance case are neither arbitrary nor capricious, they will be upheld on

review. D.C. Code § 5-420. *Wolf v. District of Columbia Bd. of Zoning Adjustment*, 397 A.2d 936, 1979 D.C. App. LEXIS 280 (1979).

Actions of the Board of Zoning Adjustment are to be accorded the presumption of regularity. D.C. Code § 5-420. *Dupont Circle Citizens Asso. v. District of Columbia Board of Zoning Adjustment*, 364 A.2d 610, 1976 D.C. App. LEXIS 372 (1976).

Nonconforming uses.

If there were not room inside restaurant to store commissary carts, restaurant owner which was directed by Health Department to store its commissary carts under cover would be entitled to building permit to construct structure to store carts, but, if there were room, application for building permit could be considered as request for variance requiring board to determine whether applicant had established hardship which would support issuance of variance. D.C. Code 1961, §§ 5-419, 5-420, subd. (3); Fed.Rules Civ.Proc. rule 52(a), 18 U.S.C. Hot Shoppes, Inc. v. Clouser, 231 F. Supp. 825, 1964 U.S. Dist. LEXIS 6657 (D.D.C.1964), affirmed by 346 F.2d 834, 120 U.S. App. D.C. 353, 1965 U.S. App. LEXIS 5604 (1965).

Board of zoning adjustment's interpretation of zoning regulation, which prohibited the enlargement of structures devoted to nonconforming uses, to prohibit enlargement of a structure containing a nonconforming use, even when the proposed enlargement is intended for a conforming use, was not clearly erroneous, was not inconsistent with the zoning regulations as a whole, and was not inconsistent with the Zoning Enabling Act. D.C. Code §§ 5-413 to 5-428. *Lenkin v. District of Columbia Bd. of Zoning Adjustment*, 428 A.2d 356, 1981 D.C. App. LEXIS 231 (1981).

Statute did not impose absolute prohibition on enlargement of nonconforming use and variance could be granted to increase height of roof of existing nonconforming use to facilitate its conversion from moving and storage warehouse to squash court facility. D.C. Code §§ 5-419, 5-420(3). *Monaco v. District of Columbia Board of Zoning Adjustment*, 409 A.2d 1067, 1979 D.C. App. LEXIS 525 (1979).

Where there was no extraordinary or exceptional situation or condition inherent in the property itself that could warrant the variance sought and the structure in question, though originally constructed as a flat, had been changed into a single-family dwelling and was utilized as such when zoning regulations were adopted which prohibited flats and where the property could continue to be used as a single-family residence in a manner consistent with zoning regulations, order of zoning administrator terminating nonconforming use as a flat and denying variance application was proper. D.C. Code §§ 1-1510, 5-420(3). *Silverstone v.*

District of Columbia Bd. of Zoning Adjustment, 396 A.2d 992, 1979 D.C. App. LEXIS 287 (1979).

Parking lots and garages.

Zoning regulation empowering Board of Adjustment to permit, in residential district, "use of unimproved lot for temporary parking of motor vehicles" meant use for temporary parking and not temporary use for parking. D.C. Code 1951, § 5-420. *Selden v. Capitol Hill Southeast Citizens Ass'n*, 219 F.2d 33, 1954 U.S. App. LEXIS 3297 (C.A.D.C. 1954).

Whether use of unimproved lot in residential district as parking lot would interfere "unreasonably" within meaning of zoning regulations, with use of neighborhood properties under zone plan, could only be determined in light of all circumstances, and these included critical parking problem. D.C. Code 1951, § 5-420. *Selden v. Capitol Hill Southeast Citizens Ass'n*, 219 F.2d 33, 1954 U.S. App. LEXIS 3297 (C.A.D.C. 1954).

House museum provided sufficient parking, under special exception to zoning regulations for residential neighborhood, where museum agreed to hire at least one person to direct traffic, to park visitor's cars off-site for special events, to police the area to see that cars were not double-parked and not blocking driveways, to instruct bus and van drivers not to idle longer than necessary, and to maximize use of rear entrance. *Georgetown Residents Alliance v. D.C. Bd. of Zoning Adjustment*, 802 A.2d 359, 2002 D.C. App. LEXIS 374 (2002).

Property for which owner sought variance from minimum parking space size requirements satisfied uniqueness requirements; unique confluence of location of carriage house on property in relation to property boundaries on north and easements on south made it necessary for owners to seek variance. D.C. Code 1981, § 5-424(g)(3). *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1990 D.C. App. LEXIS 214 (1990).

In determining whether "practical difficulties" precluded grant of zoning variance permitting parking space that did not comply with minimum length requirement next to carriage house that owner wished to convert to single family residence, board of zoning adjustment was required to determine whether locating parking space within structure of carriage house was feasible and whether such alternative was, under circumstances, itself a practical difficulty. D.C. Code 1981, § 5-424(g)(3). *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1990 D.C. App. LEXIS 214 (1990).

In ruling on supermarket's application for special exceptions to build parking lot in a residentially zoned area adjoining site of supermarket's proposed store, zoning board's appli-

cation of zoning regulation pertaining to "parking lots" rather than application of regulation pertaining to "parking spaces" that are "accessory" to another use was not plainly erroneous nor inconsistent with the regulations and board's failure to consider application in light of statutory section enumerating general purposes of the zoning regulations was not erroneous. D.C. Code §§ 5-414, 5-420. *Friendship Neighborhood Coalition v. District of Columbia Board of Zoning Adjustment*, 403 A.2d 291, 1979 D.C. App. LEXIS 394 (1979).

Where variance was sought from zoning regulation requiring parking spaces to be no farther than 800 feet from lot line of structure spaces were intended to serve, but lack of off-street parking was problem faced by many establishments in area and only unique aspect about location was owner's desire to utilize it as a public hall for which parking spaces were required, there was no "extraordinary or exceptional situation or condition" with respect to the property such as would justify a use variance. D.C. Code § 5-420. *Palmer v. Board of Zoning Adjustment*, 287 A.2d 535, 1972 D.C. App. LEXIS 343 (1972).

Inability of tenant or owner to use building as public hall under existing zoning as long as parking conditions continued in area would not constitute "hardship" upon the owner sufficient to warrant granting use variance to permit use of another lot for parking, where there was no evidence that owner could not reasonably adapt premises or find tenant to produce a reasonable income for use in conformance with the off-street parking regulations. D.C. Code § 5-420. *Palmer v. Board of Zoning Adjustment*, 287 A.2d 535, 1972 D.C. App. LEXIS 343 (1972).

Tenant's financial problems were immaterial in determining whether area variance should be granted to permit tenants to use another lot for parking. D.C. Code § 5-420. *Palmer v. Board of Zoning Adjustment*, 287 A.2d 535, 1972 D.C. App. LEXIS 343 (1972).

In absence of showing of difficulties of owner, financial or otherwise, granting of area variance to permit tenants to use another lot for parking in connection with owner's land was improper. D.C. Code § 5-420. *Palmer v. Board of Zoning Adjustment*, 287 A.2d 535, 1972 D.C. App. LEXIS 343 (1972).

Powers of board, generally.

Decision by the board of zoning adjustment (BZA) to impose a hotline staffed around-the-clock to handle complaints about university students was arbitrary and irrational as condition for university plan and special exception; the condition was unrelated to the BZA's expertise and did not promote the goal of a reasonable accommodation between the university and its neighbors. *President & Dirs. of Georgetown College v. D.C. Bd. of Zoning Adjustment*,

837 A.2d 58, 2003 D.C. App. LEXIS 696 (2003), remanded by 925 A.2d 585, 2007 D.C. App. LEXIS 326 (D.C. 2007).

A student enrollment cap imposed by the board of zoning adjustment (BZA) on a university at least approaches (if, indeed, it does not cross) the line between the exercise of legitimate zoning and land use authority and an ultra vires intrusion upon the university's educational mission. *President & Dirs. of Georgetown College v. D.C. Bd. of Zoning Adjustment*, 837 A.2d 58, 2003 D.C. App. LEXIS 696 (2003), remanded by 925 A.2d 585, 2007 D.C. App. LEXIS 326 (D.C. 2007).

The responsibility of the board of zoning adjustment (BZA) in connection with dispute between university and neighbors is to determine whether a reasonable accommodation has been made between the university and the neighbors which does not interfere with the legitimate interests of the latter or the legally protected interests of the former. *President & Dirs. of Georgetown College v. D.C. Bd. of Zoning Adjustment*, 837 A.2d 58, 2003 D.C. App. LEXIS 696 (2003), remanded by 925 A.2d 585, 2007 D.C. App. LEXIS 326 (D.C. 2007).

The powers of the board of zoning adjustment (BZA) are those defined by statute and regulation. *President & Dirs. of Georgetown College v. D.C. Bd. of Zoning Adjustment*, 837 A.2d 58, 2003 D.C. App. LEXIS 696 (2003), remanded by 925 A.2d 585, 2007 D.C. App. LEXIS 326 (D.C. 2007).

Board of zoning adjustment (BZA) had substantial, but not unbounded, discretion to reject or approve university's application for a campus plan. *George Washington Univ. v. D.C. Bd. of Zoning Adjustment*, 831 A.2d 921, 2003 D.C. App. LEXIS 553 (2003).

Reporting requirement concerning the number of full-time undergraduates, the number of available beds, and the location of those beds was a reasonable method for board of zoning adjustment (BZA) to monitor university's compliance with cap on student enrollment imposed as condition for approval of campus plan. *George Washington Univ. v. D.C. Bd. of Zoning Adjustment*, 831 A.2d 921, 2003 D.C. App. LEXIS 553 (2003).

The Board of Zoning Adjustment's (BZA's) function is to determine whether a reasonable accommodation has been made between the applicant for a special exception to zoning regulations and the neighbors, which does not interfere with the legitimate interests of the latter. *Georgetown Residents Alliance v. D.C. Bd. of Zoning Adjustment*, 802 A.2d 359, 2002 D.C. App. LEXIS 374 (2002).

Board of Zoning Adjustment (BZA) lacked authority to prohibit private university from acquiring commercially zoned off-campus property for purpose of constructing new law school on that property, even if university's agreement

with third parties, as incorporated in prior BZA-approved campus plan, could be read to forbid off-campus site; college or university use in building located in commercially zoned district was permitted as matter of right, and, if BZA were to attempt to proscribe such matter-of-right use, it would be exercising powers reserved to Zoning Commission. D.C. Code 1981, § 5-424(e). *Spring Valley Wesley Heights Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 644 A.2d 434, 1994 D.C. App. LEXIS 96 (1994).

Operation of any doctrine of estoppel, including judicial estoppel, against party to hearings before Board of Zoning Adjustment (BZA) cannot confer on BZA authority which it does not possess under applicable statute and regulations. D.C. Code 1981, § 5-424. *Spring Valley Wesley Heights Citizens Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 644 A.2d 434, 1994 D.C. App. LEXIS 96 (1994).

The Board of Zoning Adjustment, not the Zoning Administrator, has final administrative responsibility to interpret zoning regulations. D.C. Code 1981, § 5-424(g)(4). *Murray v. District of Columbia, Bd. of Zoning Adjustment*, 572 A.2d 1055, 1990 D.C. App. LEXIS 79 (1990).

Board of Zoning Appeals and Zoning Administrator have no power to implement comprehensive plan. D.C. Code 1981, § 5-424(e). *Tenley & Cleveland Park Emergency Committee v. District of Columbia Bd. of Zoning Adjustment*, 550 A.2d 331, 1988 D.C. App. LEXIS 206 (1988), writ of certiorari denied by 489 U.S. 1082, 109 S. Ct. 1539, 103 L. Ed. 2d 843, 1989 U.S. LEXIS 1460, 57 U.S.L.W. 3620 (1989).

Preemption by federal law.

Foreign Missions Act applied to foreign embassy's application for special exception to construct 38-foot antenna tower at site of chancery in District of Columbia for operation of diplomatic radio station. D.C. Code 1981, § 5-424; D.C. Code 1987 Supp., §§ 5-1201 et seq., 5-1201(a), 5-1202(a)(2), 5-1206, 5-1206(i); Foreign Missions Act, §§ 201 et seq., 201(a), 202, 202(a)(2), 203, 206, 206(d, i), as amended, 22 U.S.C. §§ 4301 et seq., 4301(a), 4302, 4302(a)(2), 4303, 4306, 4306(d, i). *Embassy of People's Republic of Benin v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 310, 1987 D.C. App. LEXIS 507 (1987).

Foreign Missions Act provided exclusive procedure available for consideration of foreign embassy's application to construct 38-foot antenna tower at site of chancery in District of Columbia for operation of diplomatic radio station, and, thus, board of zoning adjustment was without jurisdiction to review application solely under District of Columbia law. D.C. Code 1981, § 5-424; D.C. Code 1987 Supp., §§ 5-1201 et seq., 5-1201(a), 5-1202(a)(2), 5-1206,

5-1206(i); Foreign Missions Act, §§ 201 et seq., 201(a), 202, 202(a)(2), 203, 206, 206(d, i), as amended, 22 U.S.C. §§ 4301 et seq., 4301(a), 4302, 4302(a)(2), 4303, 4306, 4306(d, i). *Embassy of People's Republic of Benin v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 310, 1987 D.C. App. LEXIS 507 (1987).

Presumptions and burden of proof.

Property owner who appeals to District of Columbia Board of Zoning Adjustment for exception under zoning law and regulations has burden of showing existence of conditions warranting granting of such an exception. D.C. Code 1951, §§ 5-413 et seq., 5-420. *Hyman v. Coe*, 146 F.Supp. 24, 1956 U.S. Dist. LEXIS 2370 (D.D.C.1956).

The burden placed on landowner seeking special exception is much lighter than it would be for a use variance. *President & Dirs. of Georgetown College v. D.C. Bd. of Zoning Adjustment*, 837 A.2d 58, 2003 D.C. App. LEXIS 696 (2003), remanded by 925 A.2d 585, 2007 D.C. App. LEXIS 326 (D.C. 2007).

A "conclusive" standard of proof was erroneous if applied by the board of zoning adjustment (BZA) when deciding to impose conditions on university's campus plan because it could not find "conclusively" that an adverse impact on the surrounding neighborhoods could be avoided without the conditions. *President & Dirs. of Georgetown College v. D.C. Bd. of Zoning Adjustment*, 837 A.2d 58, 2003 D.C. App. LEXIS 696 (2003), remanded by 925 A.2d 585, 2007 D.C. App. LEXIS 326 (D.C. 2007).

Regulation governing special exceptions to zoning regulations requires only that the applicant demonstrate that it is not likely that the proposed site will become objectionable to neighboring properties. *Georgetown Residents Alliance v. D.C. Bd. of Zoning Adjustment*, 802 A.2d 359, 2002 D.C. App. LEXIS 374 (2002).

Questions of law.

In deciding appeal of zoning agency's issuance of permit regarding construction of assisted living facility and its trash room, which allegedly impermissibly protruded into rear yard, board of zoning adjustment (BZA) was not required to conduct evidentiary hearing regarding issue whether a structure had to be physically detached from main building to qualify as "accessory building"; issue was question of law that required interpretation of zoning regulation. *Chiapella v. D.C. Bd. of Zoning Adjustment*, 954 A.2d 996, 2008 D.C. App. LEXIS 374 (2008).

Regulations generally.

The Board of Zoning Adjustment (BZA) has considerable scope in construing language in a regulation that may be ambiguous. *Chagnon v.*

D.C. Bd. of Zoning Adjustment, 844 A.2d 345, 2004 D.C. App. LEXIS 66 (2004).

Board of zoning adjustment's (BZA) was not exercising its power to regulate the use of campus property when it imposed condition requiring university to obtain approximately 1500 beds on campus or outside of adjacent neighborhoods in a relatively brief period of time; the condition did not regulate campus use, even if the sanction for non-compliance was a restriction on the university's right to pursue nonresidential development on campus. *George Washington Univ. v. D.C. Bd. of Zoning Adjustment*, 831 A.2d 921, 2003 D.C. App. LEXIS 553 (2003).

Certificate of occupancy permitting "Light Manufacturing, Processing, Fabricating, & Warehousing of Steel Products and Office and Retail Construction Industrial Supplies" permitted owner to use property as a waste transfer station, even though its processing was not limited to steel products; the Rule of Last Antecedent and the context and established application of the regulation supported the interpretation that the processing use permitted by the certificate was not limited to steel products. *Perkins v. D.C. Bd. of Zoning Adjustment*, 813 A.2d 206, 2002 D.C. App. LEXIS 732 (2002).

Music school was a "school" within the dictionary definition of the term, for purposes of zoning regulations, despite contention that it was more of an art center or a business, as it was "an organized source of education or training," as well as "a place where instruction is given." D.C. Code 1981, § 5-424(g)(2); D.C.Mun.Reg. title 11, §§ 199.2(g), 206, 3108. *Neighbors on Upton Street v. District of Columbia Bd. of Zoning Adjustment*, 697 A.2d 3, 1997 D.C. App. LEXIS 130 (1997).

Music school was a "private school" and not a "trade school" within zoning regulations allowing private school but not trade school in R-1 district; school was established, conducted, and primarily supported by a nongovernmental agency, and although some music school graduates become professional musicians, music schools generally do not exist just to teach students a trade, and classes were designed for all ages and all levels of skill. D.C. Code 1981, § 5-424(g)(2); D.C.Mun.Reg. title 11, §§ 199.2(g), 206, 3108. *Neighbors on Upton Street v. District of Columbia Bd. of Zoning Adjustment*, 697 A.2d 3, 1997 D.C. App. LEXIS 130 (1997).

Exemption provided in current zoning regulations permitting a structure to be erected on a substandard lot if both area and width of lot are at least 80% of area and width of a lot specified for district indicates administrative recognition of doubtful validity of area restrictions as applied to a preexisting substandard lot. D.C.

Code § 5-420(3). *Russell v. District of Columbia Board of Zoning Adjustment*, 402 A.2d 1231, 1979 D.C. App. LEXIS 381 (1979).

Sufficiency of evidence.

In proceeding wherein an order of Board of Zoning Adjustment was reviewed, evidence sustained board's findings that critical parking problem existed in neighborhood concerned and that use of unimproved lot in residence district for trial period of two years as parking lot would not interfere unreasonably with use of neighboring property under zone plan. D.C. Code 1951, § 5-420. *Selden v. Capitol Hill Southeast Citizens Ass'n*, 219 F.2d 33, 1954 U.S. App. LEXIS 3297 (C.A.D.C. 1954).

Substantial evidence failed to sustain decision of the Board of Zoning Adjustment denying an exception to zoning regulations to permit the erection of a gasoline service station on the property of plaintiff, on the ground that the decision of the Board denying the exception was arbitrary and capricious in the legal sense. D.C. Code 1951, §§ 5-413, 5-420. *O'Boyle v. Coe*, 155 F.Supp. 581, 1957 U.S. Dist. LEXIS 2978 (D.D.C.1957).

Substantial evidence supported decision by board of zoning appeals (BZA) to deny developer's application for special exception to allow construction of 13 single family homes on single subdivided lot located in tree and slope protection overlay district; developer failed to demonstrate efficacy of "best practices" on which it relied in designing its proposed storm water management system, and did not submit erosion and sediment control plans, there was expert testimony that development plans would not shield neighborhood's trees from fatal damage, and office of planning underscored need to reduce number of lost from 13 to 12 in order to provide more space between proposed and existing structures and to help counter development's "billboard effect," but developer resisted recommendation to eliminate lot. *Dorchester Assocs. LLC v. D.C. Bd. of Zoning Adjustment*, 976 A.2d 200, 2009 D.C. App. LEXIS 257 (2009).

Evidence failed to support decision of the board of zoning adjustment (BZA) to freeze university enrollment, presumptively until 2010, at the level set in 1990 campus plan; it made no findings of a basic or underlying nature explicating how a small and gradual increase in enrollment, under a plan which significantly increased the number of students living on campus and reduced the need for off-campus housing, would adversely affect the adjoining neighborhoods. *President & Dirs. of Georgetown College v. D.C. Bd. of Zoning Adjustment*, 837 A.2d 58, 2003 D.C. App. LEXIS 696 (2003), remanded by 925 A.2d 585, 2007 D.C. App. LEXIS 326 (D.C. 2007).

Evidence supported findings of board of zoning adjustment (BZA) concerning effect that university's activities had on neighborhoods off campus; the university leveled thirty-three townhouses, bought off-campus apartment houses and converted them to dormitories available only to students, acquired a right of first refusal for an 800-unit apartment complex, and proposed to build another 753,000 square feet of gross floor area for non-residential uses on the residentially-zoned portion of the campus, and the BZA relied on the District of Columbia's comprehensive plan and testimony of residents. *George Washington Univ. v. D.C. Bd. of Zoning Adjustment*, 831 A.2d 921, 2003 D.C. App. LEXIS 553 (2003).

Evidence supported condition imposed by board of zoning adjustment (BZA) requiring university to require all full-time freshmen and sophomore students to reside in university housing located within the campus boundary established by the board to the extent that such housing was available. *George Washington Univ. v. D.C. Bd. of Zoning Adjustment*, 831 A.2d 921, 2003 D.C. App. LEXIS 553 (2003).

Evidence supported conclusion of the Board of Zoning Adjustment that zoning administrator erroneously issued building permits for rear addition and garage in Wesley Heights Overlay District; the work increased nonconformity with respect to setbacks and lot occupancy, and the larger garage would accommodate two cars. *Sisson v. D.C. Bd. of Zoning Adjustment*, 805 A.2d 964, 2002 D.C. App. LEXIS 504 (2002).

House museum's activities did not adversely affect neighboring properties, and thus museum was entitled to special exception to zoning regulations; museum prohibited use of amplified music during on-site events, agreed not to engage in heavy cleanup activities in the evening, and to adhere to 10:30 p.m. curfew for hosted events. *Georgetown Residents Alliance v. D.C. Bd. of Zoning Adjustment*, 802 A.2d 359, 2002 D.C. App. LEXIS 374 (2002).

House museum in residential neighborhood did not violate regulation concerning commercial activity, where small museum shop sold only items related to museum, and special events were related to the museum's mission. *Georgetown Residents Alliance v. D.C. Bd. of Zoning Adjustment*, 802 A.2d 359, 2002 D.C. App. LEXIS 374 (2002).

In proceeding wherein landowner sought area variance in order to build residence for his personal use on undersized lot, evidence that the proposed house would be separated from adjoining house by only 13 to 14 feet and that substantial size of variance requested, which was 24.68% below minimum area and 68% below minimum back yard allowances, supported ultimate conclusion of Board of Zoning Adjustment that the variance would have detrimental impact on the public good and impair

the zoning plan. D.C. Code § 5-420(3). *Roumel v. District of Columbia Board of Zoning Adjustment*, 417 A.2d 405, 1980 D.C. App. LEXIS 323 (1980).

Finding that proposed addition to public service organization's office building, which addition would require grant of use variance, would not have detrimental impact on neighborhood or zone plan was amply supported by the record, as no new employees would be brought into the neighborhood, the metro across the street would alleviate congestion and structure would be compatible with design and height of surrounding buildings. D.C. Code § 5-420. *Monaco v. District of Columbia Board of Zoning Adjustment*, 407 A.2d 1091, 1979 D.C. App. LEXIS 473 (1979).

Evidence was sufficient to support findings underlying decision of zoning board to grant supermarket's application for special exceptions to build parking lot in a residentially zoned area adjoining site of supermarket's proposed store, which was located in a heavily commercial district. D.C. Code § 5-420. *Friendship Neighborhood Coalition v. District of Columbia Board of Zoning Adjustment*, 403 A.2d 291, 1979 D.C. App. LEXIS 394 (1979).

Findings of Board of Zoning Adjustment that, given deficient lot size and residential zoning, there was no other use to which substandard lot could be put and that denial of application for a variance from minimum lot area requirement in order to construct a single-family detached dwelling on lot would effectively deprive owner of any use lot were supported by substantial evidence. D.C. Code § 5-420(3). *Russell v. District of Columbia Board of Zoning Adjustment*, 402 A.2d 1231, 1979 D.C. App. LEXIS 381 (1979).

Responses by Board of Zoning Adjustment to contentions raised on record in proceedings on property owner's petition for area variance, added to Board's analysis of practical difficulties of property owner's situation, demonstrated that decision of the Board granting area variance was based upon substantial evidence. D.C. Code § 5-420. *Wolf v. District of Columbia Bd. of Zoning Adjustment*, 397 A.2d 936, 1979 D.C. App. LEXIS 280 (1979).

Evidence supported decision of board of zoning adjustment denying use variance to permit one-family residence to be used as a flat. D.C. Code § 5-420(3). *Silverstone v. District of Columbia Board of Zoning Adjustment*, 372 A.2d 1286, 1977 D.C. App. LEXIS 462 (1977), vacated in part by, amended by 396 A.2d 992, 1979 D.C. App. LEXIS 287 (D.C. 1979).

There was rational basis for conclusion of District of Columbia board of zoning adjustment that owner of building in residential area had failed to make the required showing of hardship to warrant a variance to permit use of property for general office purposes. D.C. Code

§§ 5-420, 5-420(2, 3), 11-772. *Dwyer v. District of Columbia Board of Zoning Adjustment*, 320 A.2d 306, 1974 D.C. App. LEXIS 219 (1974).

Evidence established that requirements had been met for special exception to permit private high school to be located in building situated in medium density apartment house zone. D.C. Code §§ 1-1501 et seq., 1-1510, 5-414. *Dwyer v. District of Columbia Board of Zoning Adjustment*, 320 A.2d 306, 1974 D.C. App. LEXIS 219 (1974).

In action by college for review of order of board of zoning adjustment denying application for amendment to campus plan to allow college to offer short-term, continuing education type courses on year-around basis, evidence sustained findings of board that new programs would introduce large number of transient men and women onto college property, substantially increase number of people entering or leaving neighborhood, usually in automobiles, adversely affect use of neighboring property in residential zone and cause continuing instability and alarm in community because of uncertainty about nature of uses which could be anticipated. D.C. Code §§ 1-1501 et seq., 1-1509(e), 5-413 et seq. *Marjorie Webster Junior College, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 309 A.2d 314, 1973 D.C. App. LEXIS 329 (1973).

Variances.

— Area or use, variances.

Board of zoning adjustment did not improperly characterize variance sought to increase height of roof as area variance, with its concomitant lower burden of proof, simply because it facilitated change of use accomplished by special exception. D.C. Code § 5-420(3). *Monaco v. District of Columbia Board of Zoning Adjustment*, 409 A.2d 1067, 1979 D.C. App. LEXIS 525 (1979).

Where variance sought was one for conversion of row dwelling to accommodate three apartment units instead of two plus facilities for roomers, under ordinance requiring lot size of 900 square feet per unit, while actual lot area was only 2,164 square feet, no essential change in use of subject property was contemplated, and thus variance requested fell under rubric of area rather than use variances and did not require showing of both undue hardship and practical difficulties, but only a showing of practical difficulties. D.C. Code § 5-420. *Wolf v. District of Columbia Bd. of Zoning Adjustment*, 397 A.2d 936, 1979 D.C. App. LEXIS 280 (1979).

Even though landowner seeking variance from zoning which allowed only detached single family houses with minimum lot dimensions of 50 feet in width and 5,000 total square feet wished to build single-family dwellings on land,

where requested variance would allow construction of 27 row houses on lots of approximately 2,000 square feet and allow landowner to almost triple family density allowed under zoning and row houses would not be in character with other properties in zoned district, requested variance was not an area variance but a use-area variance; thus, landowner was properly required to prove undue hardship in order to be entitled to variance. D.C. Code § 5-420(3). *Taylor v. District of Columbia Bd. of Zoning Adjustment*, 308 A.2d 230, 1973 D.C. App. LEXIS 323 (1973).

— **Area variance difficulties, variances.**

To obtain an area variance, property owner must prove peculiar and exceptional practical difficulties caused by compliance with applicable regulation. D.C. Code § 5-420(3). *Russell v. District of Columbia Board of Zoning Adjustment*, 402 A.2d 1231, 1979 D.C. App. LEXIS 381 (1979).

Where two-family character of subject property made marketability of its approximately 3,000 square feet as single unit unfeasible, structure of the property worked against its effectively functioning as two-unit apartment house, and monthly expenses incurred by property owner for the property were approximately \$1,276 but monthly rental of two apartments and rooms would be about \$1,250 whereas such rental for three apartments would be about \$1,350, finding of "practical difficulties" by Board of Zoning Adjustment in proceedings on property owner's petition for area variance on lot under 2,700 square feet was neither arbitrary nor capricious. D.C. Code § 5-420. *Wolf v. District of Columbia Bd. of Zoning Adjustment*, 397 A.2d 936, 1979 D.C. App. LEXIS 280 (1979).

Determination of whether "practical difficulties" exist in "area" variance case, like determinations of whether variance at issue is one of area or use, must be made case-by-case, and must be judicially reviewed under rule of deference to administrative expertise. D.C. Code § 5-420. *Wolf v. District of Columbia Bd. of Zoning Adjustment*, 397 A.2d 936, 1979 D.C. App. LEXIS 280 (1979).

Rule as to self-imposed hardship does not apply in case of area as opposed to use variance. D.C. Code § 5-420. *Wolf v. District of Columbia Bd. of Zoning Adjustment*, 397 A.2d 936, 1979 D.C. App. LEXIS 280 (1979).

Landowner seeking area variance for substandard lot was required only to prove "peculiar and exceptional difficulties" even though he knew or should have known of area restrictions before he purchased property. D.C. Code § 5-420(3). *A. L. W., Inc. v. District of Columbia Bd. of Zoning Adjustment*, 338 A.2d 428, 1975 D.C. App. LEXIS 392 (1975).

Nature and extent of burden which will warrant an area variance is best left to facts and circumstances of each particular case. D.C. Code § 5-420. *Palmer v. Board of Zoning Adjustment*, 287 A.2d 535, 1972 D.C. App. LEXIS 343 (1972).

Generally, to warrant granting area variance, it must be shown that compliance with area restriction would be unnecessarily burdensome. D.C. Code § 5-420. *Palmer v. Board of Zoning Adjustment*, 287 A.2d 535, 1972 D.C. App. LEXIS 343 (1972).

— **Difficulties or hardship generally, variances.**

Hardship not resulting from location, situation, or condition of property, but solely from owner's appropriation of it for commercial purposes without first having obtained necessary zoning change was not such "hardship" as to justify variance. D.C. Code 1961, § 5-420(3). *Clouser v. David*, 309 F.2d 233, 1962 U.S. App. LEXIS 3986 (C.A.D.C. 1962).

Property owners of rooming house were presented with undue hardship, as would support grant of use variance permitting additional rooms on property for transient occupancy, rather than limiting operation to eight rooms, with minimum length of occupancy of 90 days; owners, in proceeding with their renovation for 12 units after receiving a Certificate of Occupancy for only eight, did not create self-imposed hardship, owners could not have renovated building for 12 units without implicit agreement and permission of government in issuing building permits and building inspection approvals, and owners had invested approximately \$1.1 million in property. *Oakland Condo. v. D.C. Bd. of Zoning Adjustment*, 22 A.3d 748, 2011 D.C. App. LEXIS 291 (2011).

Although each variance determination depends on facts, practical difficulties will involve a less onerous burden than unnecessary hardship, the more rigorous showing required to secure a use variance. D.C. Code § 5-420(3). *Russell v. District of Columbia Board of Zoning Adjustment*, 402 A.2d 1231, 1979 D.C. App. LEXIS 381 (1979).

Minimum lot restrictions are more than unnecessarily burdensome and are such as to authorize issuance of a variance when owner could never sell unimproved lot for residential use absent a variance. D.C. Code § 5-420(3). *Russell v. District of Columbia Board of Zoning Adjustment*, 402 A.2d 1231, 1979 D.C. App. LEXIS 381 (1979).

City zoning regulation, by use of disjunctive "or" in phrase "Where. . . strict application of any regulation adopted under this Act would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of such property," sets up separate statutory requisites to granting of vari-

ances, that is, showing of "practical difficulties" or "undue hardship." D.C. Code § 5-420. *Wolf v. District of Columbia Bd. of Zoning Adjustment*, 397 A.2d 936, 1979 D.C. App. LEXIS 280 (1979).

Dichotomy exists between "area variances" and "use variances," and statutory requisite of "practical difficulties" applies to showing of former and statutory requisite of "undue hardship" to showing of latter. D.C. Code § 5-420. *Wolf v. District of Columbia Bd. of Zoning Adjustment*, 397 A.2d 936, 1979 D.C. App. LEXIS 280 (1979).

Fact that homeowners might incur expenses of 50% to 90% more in pursuing methods of expansion of their kitchen other than one which would require variance and that other methods would require elimination of either interior living space or backyard space, relocation of existing utilities, and diminishment of their enjoyment of their home did not entitle them to variance from side yard requirements of zoning regulations. D.C. Code § 5-420(3). *Barbour v. District of Columbia Board of Zoning Adjustment*, 358 A.2d 326, 1976 D.C. App. LEXIS 292 (1976).

A variance may only be granted where the strict application of any regulation would result in peculiar and exceptional practical difficulties or exceptional and undue hardship. D.C. Code § 5-420(3). *Clerics of St. Viator, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 1974 D.C. App. LEXIS 222 (1974).

More stringent showing is required for use variance than for area variance. D.C. Code § 5-420. *Palmer v. Board of Zoning Adjustment*, 287 A.2d 535, 1972 D.C. App. LEXIS 343 (1972).

Owner is not required to make stringent showing of undue hardship with respect to area variance. D.C. Code § 5-420. *Palmer v. Board of Zoning Adjustment*, 287 A.2d 535, 1972 D.C. App. LEXIS 343 (1972).

Within zoning code providing for Board of Adjustment to grant variance if strict application of zoning regulation would result in practical difficulties or undue hardship on owner, criterion of practical difficulties applies to area variances and criterion of undue hardship applies to use variances. D.C. Code § 5-420. *Palmer v. Board of Zoning Adjustment*, 287 A.2d 535, 1972 D.C. App. LEXIS 343 (1972).

To support a variance, difficulties or hardships must be due to unique circumstances peculiar to applicant's property and not to general conditions in the neighborhood. D.C. Code § 5-420. *Palmer v. Board of Zoning Adjustment*, 287 A.2d 535, 1972 D.C. App. LEXIS 343 (1972).

— Effect on public, variances.

Board of zoning adjustment opinion that relief from zoning ordinance to permit use of

house as professional office could not be granted without substantial detriment to public good and without substantially impairing intent, purpose, and integrity of zoning plan relating to neighborhood which largely conformed with its residential zoning was reasonable, and court erred in substituting its own contrary opinion. D.C. Code 1961, § 5-420(3). *Clouser v. David*, 309 F.2d 233, 1962 U.S. App. LEXIS 3986 (C.A.D.C. 1962).

Even if an applicant for use variance has demonstrated uniqueness and undue hardship, the applicant must still show the third element of the variance test, namely, that the variance will not harm the public or undermine the zone plan. D.C. Code § 5-420. *Monaco v. District of Columbia Board of Zoning Adjustment*, 407 A.2d 1091, 1979 D.C. App. LEXIS 473 (1979).

Any increase in density from conversion of seminary to nursing home was not necessarily incompatible with residential neighborhood. D.C. Code § 5-420(3). *Clerics of St. Viator, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 1974 D.C. App. LEXIS 222 (1974).

Variance may not be granted, even to alleviate a bona fide serious hardship to owner, if granting thereof would adversely affect surrounding neighborhood. D.C. Code § 5-420(3). *Clerics of St. Viator, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 1974 D.C. App. LEXIS 222 (1974).

Where Board of Zoning Adjustment ruled against petitioner on hardship claim on basis of which variance from C-1 nonconforming use to a C-2 use was sought, Board should not have reached consideration of statutory proviso whether the intended use would have an adverse effect upon the character and development of the neighborhood and would substantially impair the purpose, intent or integrity of the zoning regulations and maps. D.C. Code § 5-420(3). *Salsbery v. District of Columbia Bd. of Zoning Adjustment*, 318 A.2d 894, 1974 D.C. App. LEXIS 418 (1974).

Neighborhood detriment, as such, is not a criterion under zoning statute authorizing variance where strict application of regulation would result in exceptional and undue hardship upon owner. D.C. Code § 5-420(3). *Salsbery v. District of Columbia Bd. of Zoning Adjustment*, 318 A.2d 894, 1974 D.C. App. LEXIS 418 (1974).

— Exceptional situations generally, variances.

Board of Zoning Adjustment's authority to grant variance relief for exceptional or extraordinary conditions was not limited to conditions brought about after adoption of zoning regulations. D.C. Code 1981, § 5-424(g)(3). *Gilmartin v. District of Columbia Bd. of Zoning Adjust-*

ment, 579 A.2d 1164, 1990 D.C. App. LEXIS 214 (1990).

"other extraordinary or exceptional situation or condition of specific piece of property," as required by statute to warrant variance, need not have preceded promulgation of zoning regulation. D.C. Code 1981, § 5-424(g)(3). *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1990 D.C. App. LEXIS 214 (1990).

Variance permitting addition to rear of house was not warranted under statute allowing variances for extraordinary or exceptional situations, on grounds that house was only 12 feet wide; several houses in the area were on equally small lots, and applicants for variance owned adjacent house with common wall and thus had other alternatives, albeit more costly, for improving quality of their living quarters. D.C. Code 1981, § 5-424(g)(3). *Myrick v. District of Columbia Bd. of Zoning Adjustment*, 577 A.2d 757, 1990 D.C. App. LEXIS 154 (1990).

Lot was not unique, for purpose of obtaining zoning variance, by virtue of fact it was located in historic district, in that such location was not condition which uniquely affected lot at issue. D.C. Code 1981, § 5-424(g)(3). *Capitol Hill Restoration Soc. v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939, 1987 D.C. App. LEXIS 508 (1987).

When a public service organization has inadequate facilities and applies for variance to expand into an adjacent area in common ownership long regarded as part of the same site, the possibility of alternative uses of the land does not necessarily show that no "exceptional condition" exists so as to warrant the variance, but the need to expand does not automatically exempt the organization from all zoning requirements, and application for variance must show: that the specific design which the organization wants to build constitutes an institutional necessity, not merely the most desired of various options; and precisely how the needed design features require the specific variance sought. D.C. Code 1981, § 5-424(g)(3). *Draude v. District of Columbia Bd. of Zoning Adjustment*, 527 A.2d 1242, 1987 D.C. App. LEXIS 377 (1987).

"Extraordinary circumstances" justifying a use variance are not limited to physical aspects of the land. D.C. Code § 5-420. *Monaco v. District of Columbia Board of Zoning Adjustment*, 407 A.2d 1091, 1979 D.C. App. LEXIS 473 (1979).

Restrictive covenant between House Office Building Commission and public service organization involving height limitations on new building along with design restrictions as well as United States' right of first refusal to purchase the property at lesser of cost or fair market value, which covenant was incorporated in prior variances, could be considered as

an extraordinary condition for purposes of additional use variance as it effectively restricted design, height and use to that which Board of Zoning Adjustment considered compatible with surrounding residential and governmental properties and provided evidence of organization's unique relationship with Congress. D.C. Code § 5-420. *Monaco v. District of Columbia Board of Zoning Adjustment*, 407 A.2d 1091, 1979 D.C. App. LEXIS 473 (1979).

When a public service has inadequate facilities and applies for a variance to expand into an adjacent area in common ownership which has long been regarded as part of the same site, the Board of Zoning Adjustment does not err in considering the needs of the organization as possible other extraordinary and exceptional situation or condition of a particular piece of property. D.C. Code § 5-420. *Monaco v. District of Columbia Board of Zoning Adjustment*, 407 A.2d 1091, 1979 D.C. App. LEXIS 473 (1979).

A significant factor in determining if inadequate buildings on one parcel may constitute extraordinary situation for another parcel is whether the two parcels are contiguous and under common ownership. D.C. Code § 5-420. *Monaco v. District of Columbia Board of Zoning Adjustment*, 407 A.2d 1091, 1979 D.C. App. LEXIS 473 (1979).

The extraordinary or exceptional condition which is the basis for use variance need not be inherent in the land, it can be caused by subsequent event extraneous to the land itself. D.C. Code § 5-420. *De Azcarate v. District of Columbia Board of Zoning Adjustment*, 388 A.2d 1233, 1978 D.C. App. LEXIS 391 (1978).

The term "extraordinary or exceptional situation or condition" in statute providing for variances from zoning regulations was designed to serve as an additional source of authority enabling the Board of Zoning Adjustment to temper the strict application of the zoning regulations in appropriate cases, subject to limitations set forth in the statute. D.C. Code § 5-420. *De Azcarate v. District of Columbia Board of Zoning Adjustment*, 388 A.2d 1233, 1978 D.C. App. LEXIS 391 (1978).

Statutory language allowing the Board of Zoning Adjustment to issue variance from zoning regulations for "other extraordinary or exceptional situation or condition of a specific property" served as a grant of authority to Board empowering it to provide variance relief, in appropriate cases, to extraordinary or exceptional conditions brought about after the original adoption of the zoning regulations. D.C. Code § 5-420(3). *De Azcarate v. District of Columbia Board of Zoning Adjustment*, 388 A.2d 1233, 1978 D.C. App. LEXIS 391 (1978).

— Grounds generally, variances.

Property owners of rooming house demonstrated good faith and detrimental reliance

constituting an exceptional situation, as would support grant of use variance permitting additional rooms on property for transient occupancy, rather than limiting operation to eight rooms, with minimum length of occupancy of 90 days; property had been openly and continuously used as 15-unit rooming house for over 30 years, and combined effect of issuance of license to prior owner for 15 units and all necessary final inspections on 12-unit building gave rise to owners' good faith, detrimental reliance, leading them to believe they were entitled to operate 12-unit rooming house. *Oakland Condo. v. D.C. Bd. of Zoning Adjustment*, 22 A.3d 748, 2011 D.C. App. LEXIS 291 (2011).

To obtain a variance, the applicant must demonstrate that an undue hardship or an extraordinary situation would result if the zoning regulations were applied. *Waste Mgmt. of Md. v. State Bd. of Zoning Adjustment*, 775 A.2d 1117, 2001 D.C. App. LEXIS 140 (2001).

Applicant for variance has burden of showing that property is unique because of some physical aspect or other extraordinary or exceptional situation or condition inherent in the property, that strict application of zoning regulations will cause undue hardship or practical difficulty to the applicant and that granting the variance will do no harm to public good or to zone plan. D.C. Code 1981, § 5-424(g)(3). *Tyler v. District of Columbia Bd. of Zoning Adjustment*, 606 A.2d 1362, 1992 D.C. App. LEXIS 104 (1992).

In order to obtain zoning variance, applicant must show: that property is unique because of some physical aspect or other extraordinary or exceptional situation or condition inherent in property; that strict application of zoning regulations will cause undue hardship or practical difficulty to applicant; and that granting variance will do no harm to public good or to zone plan. D.C. Code 1981, § 5-424(g)(3). *Capitol Hill Restoration Soc. v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939, 1987 D.C. App. LEXIS 508 (1987).

Area variance may be granted for improvement of property if all of the following conditions are met: the property suffers from "exceptional narrowness, shallowness, or shape" or from exceptional topographical conditions or other extraordinary or exceptional situation or condition; the exceptional circumstances result in peculiar and exceptional practical difficulties to the owner unless he or she can obtain a variance; and variance relief will not create substantial detriment to the public good or substantially impair the intent, purpose, and integrity of the zone plan. D.C. Code 1981, § 5-424(g)(3). *Draude v. District of Columbia Bd. of Zoning Adjustment*, 527 A.2d 1242, 1987 D.C. App. LEXIS 377 (1987).

Area variance is only appropriate where three conditions exist: (1) property is unique because of size, shape, topography or other

extraordinary or exceptional situation or condition; (2) owner is encountering exceptional practical difficulties as result of strict application of zoning regulation to his particular property; (3) variance would not cause substantial detriment to public good and would not substantially impair intent, purpose and integrity of zone plan. D.C. Code § 5-420(3). *Carliner v. District of Columbia Bd. of Zoning Adjustment*, 412 A.2d 52, 1980 D.C. App. LEXIS 252 (1980).

A landowner must meet three requirements for a use variance: (1) unique physical aspects or other extraordinary or exceptional situation or condition of a specific piece of property; (2) undue hardship; and (3) no harm to the public or to the zone plan. D.C. Code § 5-420. *Monaco v. District of Columbia Board of Zoning Adjustment*, 407 A.2d 1091, 1979 D.C. App. LEXIS 473 (1979).

Upon a showing of unique practical difficulties, a variance may issue, subject to proviso that relief can be granted without substantial detriment to public good and without substantially impairing zone plan. D.C. Code § 5-420(3). *Russell v. District of Columbia Board of Zoning Adjustment*, 402 A.2d 1231, 1979 D.C. App. LEXIS 381 (1979).

Once an extraordinary and exceptional situation or condition has arisen with respect to property, the owner must show peculiar and exceptional practical difficulties or exceptional and undue hardship in order to obtain variance from zoning regulations; furthermore, Board of Zoning Adjustment may grant variance relief only where there is no substantial detriment to the public and no impairment of the intent, purpose and integrity of the zone plan. D.C. Code § 5-420(3). *De Azcarate v. District of Columbia Board of Zoning Adjustment*, 388 A.2d 1233, 1978 D.C. App. LEXIS 391 (1978).

Under zoning statute, grant of variance on basis of hardship was not restricted to case where required hardship inheres in "land" as opposed to "property." D.C. Code § 5-420(3). *Clerics of St. Viator, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 1974 D.C. App. LEXIS 222 (1974).

Use variance cannot be granted unless a situation arises where reasonable use cannot be made of property in manner consistent with zoning regulations. D.C. Code § 5-420. *Palmer v. Board of Zoning Adjustment*, 287 A.2d 535, 1972 D.C. App. LEXIS 343 (1972).

— In general.

"Variance" is form of administrative relief granted by the Board of Zoning Adjustment in response to specific requests for changes in zoning plan; Board may also issue "use variances," which are changes in permitted use, and Board may also issue special exceptions, only in situations specified by zoning laws and only to the extent that Board can make neces-

sary factual findings set forth in zoning laws. D.C. Code 1981, §§ 5-413 to 5-432; D.C. Mun.Reg. tit. 11, §§ 3107.2, 3108.1. *Western Presbyterian Church v. Board of Zoning Adjustment*, 862 F. Supp. 538, 1994 U.S. Dist. LEXIS 12768 (1994), dismissed by 1995 U.S. App. LEXIS 5085 (D.C. Cir. Feb. 3, 1995).

To succeed on a claim for estoppel to deny building permit, applicant must make a six-part showing: (1) expensive and permanent improvements, (2) made in good faith, (3) in justifiable and reasonable reliance upon (4) affirmative acts of the District of Columbia government, (5) without notice that the improvements might violate the zoning regulations; and (6) equities that strongly favor the applicant. *Bannum, Inc. v. D.C. Bd. of Zoning Adjustment*, 894 A.2d 423, 2006 D.C. App. LEXIS 133 (2006).

"Variance" is an authorization to a property owner to depart from literal requirements of zoning regulations in utilization of his property in cases in which strict enforcement of the zoning regulations would cause undue hardship. D.C. Code § 5-420(3). *Daniel v. District of Columbia Bd. of Zoning Adjustment*, 329 A.2d 773, 1974 D.C. App. LEXIS 329 (1974).

Purpose of a variance provision is to prevent a zoning statute from operating to deprive a property owner of all beneficial use of his property. D.C. Code § 5-420(3). *Clerics of St. Viator, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 1974 D.C. App. LEXIS 222 (1974).

Variance procedure is designed to provide relief from strict letter of zoning regulations, protect zoning legislation from constitutional attack, alleviate an otherwise unjust invasion of property rights and prevent usable land from remaining idle. D.C. Code § 5-420. *Palmer v. Board of Zoning Adjustment*, 287 A.2d 535, 1972 D.C. App. LEXIS 343 (1972).

— Profit from land, variances.

Normally a property owner, seeking a use variance, suffers no undue hardship when his property can produce a reasonable profit in a permitted use. D.C. Code § 5-420. *Monaco v. District of Columbia Board of Zoning Adjustment*, 407 A.2d 1091, 1979 D.C. App. LEXIS 473 (1979).

Board of Zoning Adjustment has no authority to grant a use variance in order to assure a profit to party petitioning for variance. D.C. Code §§ 5-420(3), 11-722. *Salsbery v. District of Columbia Bd. of Zoning Adjustment*, 357 A.2d 402, 1976 D.C. App. LEXIS 542 (1976).

Area variance cannot be granted on ground that property, which produces reasonable income when conforming to regulations, will, if put to another use, yield a greater return. D.C. Code § 5-420. *Palmer v. Board of Zoning Ad-*

justment, 287 A.2d 535, 1972 D.C. App. LEXIS 343 (1972).

Inability to put property to more profitable use or loss of economic advantage is not sufficient to constitute "hardship" such as will warrant granting use variance. D.C. Code § 5-420. *Palmer v. Board of Zoning Adjustment*, 287 A.2d 535, 1972 D.C. App. LEXIS 343 (1972).

— Reliance upon authorities, variances.

Board of zoning adjustment (BZA) was not estopped from denying warehouse tenant's request for a building permit to construct community correction center, even though tenant relied on two concurrence letters by Department of Consumer and Regulatory Affairs (DCRA), gave notice to councilman, and refurbished the warehouse at a cost of nearly half a million dollars; reliance on the letters was not justifiable and reasonable, the tenant did not provide the DCRA with a copy of either the request for proposal or the contract and did not reveal the details about the operation of the proposed center, and the BZA could find equities in favor of advisory neighborhood commission. *Bannum, Inc. v. D.C. Bd. of Zoning Adjustment*, 894 A.2d 423, 2006 D.C. App. LEXIS 133 (2006).

Variance law is broad enough to relieve, in some instances, the strict application of the zoning regulations where an applicant's unique situation and undue hardship are caused by good-faith reliance on prior assurances of zoning authorities; while authorities' actions may not suffice to warrant application of estoppel, their actions may be considered under variance law, which is designed to avoid harsh and unjust results in extraordinary situations. D.C. Code § 5-420. *Monaco v. District of Columbia Board of Zoning Adjustment*, 407 A.2d 1091, 1979 D.C. App. LEXIS 473 (1979).

Where Zoning Commission and House Office Building Commission implicitly approved site to which public service organization sought to relocate following condemnation of prior site and indicated that organization proceed by way of variances rather than a zone change and variances were granted for greatest part of the project and organization proceeded in good faith to construct proposed club and stage one of office building and secured a variance for second stage, which variance had lapsed, the actions by the zoning authorities provided implicit assurance that the project could be completed, for purpose of a second variance for the stage two office building. D.C. Code § 5-420. *Monaco v. District of Columbia Board of Zoning Adjustment*, 407 A.2d 1091, 1979 D.C. App. LEXIS 473 (1979).

Good faith, detrimental reliance on zoning authorities' informal assurances that variances would be granted to complete office project for nonprofit public service organization could be

considered in assessing undue hardship for purpose of granting use variance to complete second and final stage of the project, especially since organization relied on actions of zoning authorities in forming a covenant with House Office Building Commission, which covenant would greatly reduce value of present investment if organization were required to move, with the hardship due to reliance that accommodation would be made to allow expansion of present site, and not to poor bargaining. D.C. Code § 5-420. *Monaco v. District of Columbia Board of Zoning Adjustment*, 407 A.2d 1091, 1979 D.C. App. LEXIS 473 (1979).

A use variance applicant's good faith, detrimental reliance on previous zoning actions can be relevant to determine undue hardship, the second branch of the variance test. D.C. Code § 5-420. *Monaco v. District of Columbia Board of Zoning Adjustment*, 407 A.2d 1091, 1979 D.C. App. LEXIS 473 (1979).

Board of Zoning Adjustment was authorized to grant variance from minimum-width requirement of lot for single-family residential use where original parcel had been susceptible to subdivision into three conforming parcels, zoning office personnel on three occasions implicitly found that lot in question conformed to width requirements, lot owner and predecessor proceeded in good faith following subdivision of original parcel, homes were constructed on two out of three newly created lots and present dispute was due to actions of zoning officials which were later found to be in error. D.C. Code § 5-420(3). *De Azcarate v. District of Columbia Board of Zoning Adjustment*, 388 A.2d 1233, 1978 D.C. App. LEXIS 391 (1978).

— Self-inflicted hardship, variances.

Failure of configuration of lot to meet width requirements could not accurately be described as a direct consequence of the sole and affirmative acts by lot owner and predecessor in title where zoning department employees played a significant part by approving three separate applications during original subdivision creating lots, and thus self-created hardship rule did not apply to preclude variance from lot width requirements. D.C. Code § 5-420. *De Azcarate v. District of Columbia Board of Zoning Adjustment*, 388 A.2d 1233, 1978 D.C. App. LEXIS 391 (1978).

Where purchasers of building were aware of litigation pending before court to obtain use variance, they assumed risk that use of building might be limited; thus any hardship based on misapprehension as to available uses could not be attributed to them, although their grantor in her primary claim of hardship had contended a strict application of zoning regulations requiring use of building as one-family residence would cause economic loss to her by reason of her large financial expenditure in

purchasing property, thinking that it could be used as a flat. D.C. Code § 5-420(3). *Silverstone v. District of Columbia Board of Zoning Adjustment*, 372 A.2d 1286, 1977 D.C. App. LEXIS 462 (1977), vacated in part by, amended by 396 A.2d 992, 1979 D.C. App. LEXIS 287 (D.C. 1979).

Where any hardship to petitioner for zoning variance stemmed from fact that petitioner had contracted to purchase the subject property without conditioning the contract on the securing of a use variance, hardship was self-inflicted and not such as to support grant of a use variance. D.C. Code §§ 5-420(3), 11-722. *Salsbery v. District of Columbia Bd. of Zoning Adjustment*, 357 A.2d 402, 1976 D.C. App. LEXIS 542 (1976).

Owner of seminary was not precluded on application for variance from claiming hardship on theory that any hardship was self-imposed, where it was not building of structure which gave rise to complained-of hardship but hardship was caused by extraordinary drop in enrollment of seminarians due solely to historical circumstances and beyond control of seminary administration. D.C. Code § 5-420(3). *Clerics of St. Viator, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 1974 D.C. App. LEXIS 222 (1974).

— Uniqueness, variances.

Zoning statute does not preclude approval of variance where uniqueness arises from confluence of factors; extraordinary or exceptional condition must affect single property. D.C. Code 1981, § 5-424(g)(3). *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1990 D.C. App. LEXIS 214 (1990).

Grant of zoning variance to permit addition to house which was over 100 years old was not warranted under code provision allowing variance for extraordinary or exceptional situations; many houses in neighborhood were of that vintage. D.C. Code 1981, § 5-424(g)(3). *Myrick v. District of Columbia Bd. of Zoning Adjustment*, 577 A.2d 757, 1990 D.C. App. LEXIS 154 (1990).

Lot's large size did not support finding of uniqueness, for purpose of obtaining zoning variance, where other lots in area were similarly large. D.C. Code 1981, § 5-424(g)(3). *Capitol Hill Restoration Soc. v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 939, 1987 D.C. App. LEXIS 508 (1987).

Past zoning history can be taken into account in the uniqueness facet of the variance test. D.C. Code § 5-420. *Monaco v. District of Columbia Board of Zoning Adjustment*, 407 A.2d 1091, 1979 D.C. App. LEXIS 473 (1979).

Public service organization's desire to move to site for which it sought a use variance did not make the site unique; however, although a commercial user might not be able to establish

uniqueness in a particular site's exceptional profit-making potential, the Board of Zoning Appeals could be more flexible when it assessed a nonprofit organization which was a well-established element of our governmental system and fact that the site was uniquely suitable for the organization's headquarters because of the surrounding use, the Capitol. D.C. Code § 5-420. *Monaco v. District of Columbia Board of Zoning Adjustment*, 407 A.2d 1091, 1979 D.C. App. LEXIS 473 (1979).

Fact that public service organization had already constructed a building on adjoining property was a factor which could be considered in finding uniqueness for purpose of granting use variance to enable the organization to complete its building plans by constructing the "second stage" on immediately adjacent parcel. D.C. Code § 5-420. *Monaco v. District of Columbia Board of Zoning Adjustment*, 407 A.2d 1091, 1979 D.C. App. LEXIS 473 (1979).

Since site's proximity to the Capitol made it uniquely valuable to public service organization, the fact of prior construction and the contiguous subject site could be considered together in applying the uniqueness aspects of the area variance test, especially because past acts of zoning authorities in granting variances to construct portion of project led the organization to rely in good faith on their eventual consent to the final stage of the building. D.C. Code § 5-420. *Monaco v. District of Columbia Board of Zoning Adjustment*, 407 A.2d 1091, 1979 D.C. App. LEXIS 473 (1979).

Applicant for an area variance must demonstrate that practical difficulties of compliance are caused by uniqueness of property, not merely that his plight is unique. D.C. Code § 5-420(3). *Russell v. District of Columbia Board of Zoning Adjustment*, 402 A.2d 1231, 1979 D.C. App. LEXIS 381 (1979).

Requiring an applicant for area variance to demonstrate that practical difficulties of compliance are caused by uniqueness of property insures relief for problems peculiarly related to applicant's land or structure, and not shared by other property in neighborhood, thus avoiding a de facto amendment of zoning laws. D.C. Code § 5-420(3). *Russell v. District of Columbia Board of Zoning Adjustment*, 402 A.2d 1231, 1979 D.C. App. LEXIS 381 (1979).

Showing of uniqueness is required in order to obtain area variance in the District of Columbia. D.C. Code § 5-420(3). *Barbour v. District of Columbia Board of Zoning Adjustment*, 358 A.2d 326, 1976 D.C. App. LEXIS 292 (1976).

Fact that expansion requiring a variance is personally preferable to other methods not requiring variances does not constitute a unique

property situation entitling owner to variance. D.C. Code § 5-420(3). *Barbour v. District of Columbia Board of Zoning Adjustment*, 358 A.2d 326, 1976 D.C. App. LEXIS 292 (1976).

Exceptional shape or contour of particular piece of property may be ground for granting area variance if strict application of zoning regulations would result in peculiar and exceptional practical difficulties to landowner. D.C. Code § 5-420(3). *A. L. W., Inc. v. District of Columbia Bd. of Zoning Adjustment*, 338 A.2d 428, 1975 D.C. App. LEXIS 392 (1975).

If circumstances affect whole area, proper remedy is to seek an amendment of zoning regulation rather than a variance as to particular parcel in area. D.C. Code § 5-420. *Palmer v. Board of Zoning Adjustment*, 287 A.2d 535, 1972 D.C. App. LEXIS 343 (1972).

— Use variance hardship, variances.

A property owner is entitled to a variance when he is deprived of all beneficial use of his property. D.C. Code § 5-420(3). *Russell v. District of Columbia Board of Zoning Adjustment*, 402 A.2d 1231, 1979 D.C. App. LEXIS 381 (1979).

Where, inter alia, property for which zoning variance was sought could reasonably be used for row-type townhouses and where such a development was permissible in the district, exceptional and undue hardship necessary to enable the grant of a variance did not exist. D.C. Code §§ 5-420(3), 11-722. *Salsbery v. District of Columbia Bd. of Zoning Adjustment*, 357 A.2d 402, 1976 D.C. App. LEXIS 542 (1976).

Applicant seeking use variance must show "exceptional and undue hardship," but where substandard lot is subject of application for area variance, proof of only "peculiar and exceptional difficulties" is involved. D.C. Code § 5-420(3). *A. L. W., Inc. v. District of Columbia Bd. of Zoning Adjustment*, 338 A.2d 428, 1975 D.C. App. LEXIS 392 (1975).

On application for variance to convert semi-nary to nursing home on claim of hardship, necessary element of proof of hardship was evidence showing inability of applicant to make a reasonable disposition of property for a permitted use. D.C. Code § 5-420(3). *Clerics of St. Viator, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 291, 1974 D.C. App. LEXIS 222 (1974).

To grant use variance, it must be shown that zoning regulations preclude use of property in question for any purpose for which it is reasonably adapted, that is, any use with fair reasonable return arising out of ownership. D.C. Code § 5-420. *Palmer v. Board of Zoning Adjustment*, 287 A.2d 535, 1972 D.C. App. LEXIS 343 (1972).

§ 6-641.08. Maps and regulations of Zoning Commission to be filed; regulations to be published.

A copy of any map established by said Zoning Commission and of its zoning regulations shall be filed in the Office of the Mayor of the District of Columbia. A copy of any regulation or any amendment adopted after June 20, 1938, shall be published once in 1 or more daily newspapers printed in the District of Columbia for the information of all concerned.

(June 20, 1938, 52 Stat. 800, ch. 534, § 9.)

Cross references. — Rules and regulations, publication, see § 2

Prior Codifications. — 1981 Ed., § 5-425.
1973 Ed., § 5-421.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 6-641.09. Building permits; certificates of occupancy.

(a) It shall be unlawful to erect, construct, reconstruct, convert, or alter any building or structure or part thereof within the District of Columbia without obtaining a building permit from the Inspector of Buildings, and said Inspector shall not issue any permit for the erection, construction, reconstruction, conversion, or alteration of any building or structure, or any part thereof, unless the plans of and for the proposed erection, construction, reconstruction, conversion, or alteration fully conform to the provisions of this subchapter and of the regulations adopted under said sections. In the event that said regulations provide for the issuance of certificates of occupancy or other form of permit to use, it shall be unlawful to use any building, structure, or land until such certificate or permit be first obtained. It shall be unlawful to erect, construct, reconstruct, alter, convert, or maintain or to use any building, structure, or part thereof or any land within the District of Columbia in violation of the provisions of said sections or of any of the provisions of the regulations adopted under said sections. The owner or person in charge of or maintaining any such building or land or any other person who erects, constructs, reconstructs, alters, converts, maintains, or uses any building or structure or part thereof or land in violation of said sections or of any regulation adopted under said sections, shall upon conviction for such violation on information filed in the Superior Court of the District of Columbia by the Corporation Counsel or any of his assistants in the name of said District and which Court is hereby authorized to hear and determine such cases be punished by a fine of not more than \$100 per day for each and every day such violation shall continue. The Corporation Counsel of the District of Columbia

or any neighboring property owner or occupant who would be specially damaged by any such violation may, in addition to all other remedies provided by law, institute injunction, mandamus, or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use, or to correct or abate such violation or to prevent the occupancy of such building, structure, or land. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this subchapter, or any rules or regulations issued under the authority of these sections, pursuant to Chapter 18 of Title 2. Adjudication of any infraction of this chapter shall be pursuant to Chapter 18 of Title 2.

(b) A building permit shall not be issued to or on behalf of the District government unless proper notice has been given under § 1-309.10. The Department of Consumer and Regulatory Affairs shall issue a cease and desist order to enjoin any construction project that is issued in noncompliance with this section.

(June 20, 1938, 52 Stat. 800, ch. 534, § 10; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); Oct. 5, 1985, D.C. Law 6-42, § 450, 32 DCR 4450; Apr. 13, 2005, D.C. Law 15-349, § 3, 52 DCR 1997.)

Cross references. — Advisory Neighborhood Commissions, duties and responsibilities, see § 1-309.10.

Assistant Inspector of Buildings, powers, see § 2-138.

Residential real property transfer excise tax, “dealer” defined, see § 47-1401.

Prior Codifications. — 1981 Ed., § 5-426. 1973 Ed., § 5-422.

Effect of amendments. — D.C. Law 15-349 designated the existing text as subsec. (a); and added subsec. (b).

Legislative history of Law 6-42. — Law 6-42, the “Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985,” was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

Legislative history of Law 15-349. — Law 15-349, the “Notice Requirement for Publicly Funded Building Projects Amendment Act of 2004,” was introduced in Council and assigned Bill No. 15-635 which was referred to the Committee Public Services. The Bill was adopted on first and second readings on November 9, 2004, and December 21, 2004, respectively. Signed by the Mayor on January 19, 2005, it was assigned Act No. 15-743 and transmitted to both Houses of Congress for its review. D.C. Law 15-349 became effective on April 13, 2005.

Editor’s notes. — Office of Inspector of Buildings abolished: Section 3 of the Act of December 20, 1944, 58 Stat. 822, ch. 611, transferred all the duties, powers, rights, and authority of the Inspector of Buildings of the District of Columbia to the Director of Inspection of the District of Columbia. The Department of Inspections was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 55 of the Board of Commissioners, dated June 30, 1953, and amended August 13, 1953, and December 17, 1953, established, under the direction and control of a Commissioner, a Department of Licenses and Inspections headed by a Director. The Order set out the purpose, organization, and functions of the new Department. The Order provided that all of the functions and positions of the following named organizations were transferred to the new Department of Licenses and Inspections: The Department of Inspections including the Engineering Section, the Building Inspection Section, the Electrical Section, the Elevator Inspection Section, the Fire Safety Inspection Section, the Plumbing Inspection Section, the Smoke and Boiler Inspection Section, and the Administrative Section, and similarly the Department of Weights, Measures and Markets, the License Bureau, the License Board, the License Committee, the Board of Special Appeals, the Board for the Condemnation of Dangerous and Unsafe Buildings, and the Central Permit Bureau. The Order provided that in

accordance with the provisions of Reorganization Plan No. 5 of 1952, the named organizations were abolished. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions vested in the Department of Licenses and Inspection by Reorganization Order No. 55 were transferred to the Director of the Department of Economic Development by Commis-

sioner's Order No. 69-96, dated March 7, 1969. The Department of Economic Development was replaced by Mayor's Order No. 78-42, dated February 17, 1978, which Order established the Department of Licenses, Investigation and Inspections. The Department of Licenses, Investigation and Inspections was transferred to the Department of Consumer and Regulatory Affairs by Reorganization Plan No. 1 of 1983.

CASE NOTES

ANALYSIS

Admissibility of evidence.

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Admissibility of evidence.

The court would take judicial notice that license regulations applying to rooming houses were adopted during war emergency when thousands of people were coming to Washington to live in rooming houses and that it was vitally necessary to protect their health. *Savage v. District of Columbia*, 54 A.2d 562, 1947 D.C. App. LEXIS 153 (Cr.App. 1947).

Defenses.

Commercial tenant did not establish laches defense to Department of Consumer and Regulatory Affairs' (DCRA) revocation of certificate of occupancy to use leased premises as automobile service center, which revocation was based on use of premises for automobile repair garage, a use that not permitted in certificate; before 1990, there was no enforcement to be taken because premises had been occupied until 1989 by automobile dealerships that had been granted limited variances to perform repairs incidental to sale of new cars, and DCRA promptly sought to enforce the prohibition on repair garages, by notices of infraction issued to landlord in 1990 and 1992. *Kuri Bros. v. District of Columbia Bd. of Zoning Adjustment*, 891 A.2d 241, 2006 D.C. App. LEXIS 24 (2006).

In the zoning context, the defense of laches is judicially disfavored, because of the public interest in enforcement of the zoning laws; accordingly, laches is rarely applied in the zoning context, except in the clearest and most compelling circumstances. *Kuri Bros. v. District of Columbia Bd. of Zoning Adjustment*, 891 A.2d 241, 2006 D.C. App. LEXIS 24 (2006).

An applicant who during a two year period failed to correct conditions which caused rejection of application for occupancy permit could not urge as bar to prosecution for operating without a permit that he was never given an opportunity to correct the conditions. D.C. Code 1940, § 5-401 et seq. *Savage v. District of Columbia*, 54 A.2d 562, 1947 D.C. App. LEXIS 153 (Cr.App. 1947).

A landlord who as early as October 19, 1945, had been notified of certain violation of health regulations could not urge as a bar to prosecution for operating a rooming house without a license between June 14, 1946 and October 31, 1946 that he had not been given an opportunity to correct conditions. *Savage v. District of Columbia*, 54 A.2d 562, 1947 D.C. App. LEXIS 153 (Cr.App. 1947).

Prosecution for operating a rooming house without a license between specified dates was not barred by correction of the conditions subsequent thereto. *Savage v. District of Columbia*, 54 A.2d 562, 1947 D.C. App. LEXIS 153 (Cr.App. 1947).

Double jeopardy.

An acquittal on charge of using a single family dwelling without an occupancy permit between certain dates would not bar prosecution for use without a permit between subsequent dates, each information containing a *continuando* clause. D.C. Code 1940, § 5-401 et seq. *Savage v. District of Columbia*, 54 A.2d 562, 1947 D.C. App. LEXIS 153 (Cr.App. 1947).

In general.

The mere purchase of land does not create a right to rely on existing zoning. *Speyer v. Barry*, 588 A.2d 1147, 1991 D.C. App. LEXIS 71 (1991).

Under the Comprehensive Plan Amendments Act, in which the counsel for the District of Columbia declared that the government shall

be subject to zoning, the District of Columbia government was no longer exempt from zoning laws applicable to private parties. D.C. Code 1981, § 1-250. *Speyer v. Barry*, 588 A.2d 1147, 1991 D.C. App. LEXIS 71 (1991).

Injunction and other remedies generally.

A suit to enjoin zoning commission from carrying into effect a zoning order is not an appeal on the merits of the issues presented to the commission, and hence court should not substitute its judgment for that of the commission even for reasons which appear most persuasive. D.C. Code 1940, §§ 5-414, 5-422. *Wolpe v. Poretsky*, 144 F.2d 505, 1944 U.S. App. LEXIS 2867 (1944).

Mandamus to compel issuance of permit to erect gasoline station did not lie where applicants failed to exhaust remedy by appeal (D.C. Code 1929, T. 25, § 521 et seq.) U.S. ex rel. *Connor v. District of Columbia*, 61 F.2d 1015, 1932 U.S. App. LEXIS 4491 (1932).

Decision of federal District Court on issues involved in pending proceeding by plaintiffs for declaratory judgment to review determination of District of Columbia board of zoning adjustment that certificate of occupancy should not issue for premises leased to federal government could not affect function of District of Columbia Court of General Sessions in performing its duty of determining whether same plaintiffs had violated District of Columbia building restriction statute by acting before their rights were fully adjudicated, and plaintiffs were thus not entitled to injunction restraining further prosecution under statute. D.C. Code 1961, § 5-422. *McCloskey v. Scrivener*, 238 F. Supp. 497, 1965 U.S. Dist. LEXIS 6403 (D.D.C.1965).

Under statute governing building permits and certificates of occupancy, motions court was empowered to determine whether owners of complex in which cooperative apartment building was located maintained 1,240 parking spaces at complex which were required by zoning authorities, and if not, whether apartment residents and building owner were entitled to injunctive relief if they could demonstrate irreparable injury, and court also had authority to ascertain, in connection with residents and building owner's declaratory judgment claim, whether any zoning orders expressly, or implicitly through incorporation of representations to zoning authorities by complex owners' predecessors, entitled residents and building owner to parking spaces in reasonable proximity to apartment building and at fair and reasonable rate under circumstances. D.C. Code 1981, § 5-426. *Lund v. Watergate Investors Ltd. Pshp.*, 728 A.2d 77, 1999 D.C. App. LEXIS 77 (1999).

Statute prescribing criminal penalties for failure to obtain building permit or certificate of occupancy when either is required, and authorizing corporation counsel or any neighboring

property owner or occupant who would be specially damaged by such failure to institute action for injunction, does not require issuance of injunction on showing of special damage, but merely authorizes any neighboring property owner or occupant who can make such a showing to sue for injunction; while statute gives standing to such parties to bring suit, there is no right to relief without showing of irreparable harm. D.C. Code 1981, § 5-426. *President & Directors of Georgetown College for Georgetown University v. Diavatis*, 470 A.2d 1248, 1983 D.C. App. LEXIS 560 (1983).

Where issue of whether zoning regulations, which did not permit establishment of sexually oriented businesses without prior approval of zoning board, had been violated by restaurant's provision of live female nude dancing entertainment for patrons was issue of fact, trial court had to make specific finding on question of whether violation had actually occurred or was likely to occur before it could decide whether to grant injunctive relief to neighboring property owner against alleged zoning violation. D.C. Code 1981, § 5-426. *President & Directors of Georgetown College for Georgetown University v. Diavatis*, 470 A.2d 1248, 1983 D.C. App. LEXIS 560 (1983).

Jurisdiction.

Where owners and operators of substantial rental property in close proximity to proposed community correctional center brought action for a preliminary and permanent injunction barring District of Columbia officials from using the premises as such a center on ground that the center was not a rooming house under District of Columbia zoning regulations, it was improper to determine merits and to issue a permanent injunction without requiring recourse under doctrine of primary jurisdiction to administrative remedies available to parties that would have provided guidance of administrative expertise which the courts should require. Zoning Act of June 20, 1938, 52 Stat. 797; D.C. Code §§ 5-412, 5-413, 5-420. *Browner Bldg., Inc. v. Shehyn*, 442 F.2d 847, 1971 U.S. App. LEXIS 11721 (C.A.D.C. 1971).

Issue concerning maximum height permissible under the Height of Buildings Act for international trade center, which was to cover two city blocks in the District of Columbia, was ripe for resolution, even though local authorities had not yet issued construction permit allowing developers to rise to any specific height, where developers made clear their intention to build center to height of 130 feet and where federal Government and preservationists had made equally clear their position that such height was unlawful. D.C. Code 1981, § 5-405. *Techworld Dev. Corp. v. D.C. Preservation League*, 648 F. Supp. 106, 1986 U.S. Dist. LEXIS 21851 (1986), vacated by, remanded by

1987 U.S. App. LEXIS 18346 (D.C. Cir. June 2, 1987).

Decision of federal District Court on issues involved in pending proceeding by plaintiffs for declaratory judgment to review determination of District of Columbia board of zoning adjustment that certificate of occupancy should not issue for premises leased to federal government could not affect function of District of Columbia Court of General Sessions in performing its duty of determining whether same plaintiffs had violated District of Columbia building restriction statute by acting before their rights were fully adjudicated, and plaintiffs were thus not entitled to injunction restraining further prosecution under statute. D.C. Code 1961, § 5-422. *McCloskey v. Scrivener*, 238 F. Supp. 497, 1965 U.S. Dist. LEXIS 6403 (D.D.C.1965).

Under doctrine of primary jurisdiction, superior court was required to decline to exercise its jurisdiction over occupant's action against District involving question of validity of certificate of occupancy, pending resolution of proceedings before Board of Zoning Adjustment (BZA) in which District charged occupant with operating its transfer station without valid certificate of occupancy, even though occupant's action was filed before District began administrative proceedings. *District of Columbia v. L.G. Indus.*, 758 A.2d 950, 2000 D.C. App. LEXIS 204 (2000).

Failure of challengers to issuance of building permit to pursue any action before Zoning Commission, which was exclusive agency vested with responsibility for assuring that zoning regulations were not inconsistent with comprehensive plan, amounted to failure to exhaust administrative remedies. *Tenley & Cleveland Park Emergency Committee v. District of Columbia Bd. of Zoning Adjustment*, 550 A.2d 331, 1988 D.C. App. LEXIS 206 (1988), writ of certiorari denied by 489 U.S. 1082, 109 S. Ct. 1539, 103 L. Ed. 2d 843, 1989 U.S. LEXIS 1460, 57 U.S.L.W. 3620 (1989).

Jury trial right.

Where accused was charged under three separate informations which were consolidated for trial, with using premises without a certificate of occupancy, operating the premises as a rooming house between certain dates without a license, and using the same premises as a rooming house without a license between certain other dates, jury trial was properly denied. D.C. Code 1940, §§ 11-616, 47-2347. *Savage v. District of Columbia*, 54 A.2d 562, 1947 D.C. App. LEXIS 153 (Cr.App. 1947).

A single offense of using premises for a purpose other than a single family dwelling without an occupancy permit or of operating a rooming house without a license, is a petty offense not involving moral turpitude nor indictable at common law, and therefore a jury

trial is not demandable as of right. D.C. Code 1940, §§ 11-616, 47-2347. *Savage v. District of Columbia*, 54 A.2d 562, 1947 D.C. App. LEXIS 153 (Cr.App. 1947).

Lawfulness of actions.

A litigant entitled to permanent relief under zoning regulations may be compelled to pursue his administrative remedies rather than be able either to resort to self-help or to seek an initial judicial determination. *Brawner Bldg., Inc. v. Shehyn*, 442 F.2d 847, 1971 U.S. App. LEXIS 11721 (C.A.D.C. 1971).

Corporation's use for golf course of land in residential district previously used exclusively for agricultural purposes without first obtaining occupancy permit held unlawful, and subjected corporation to penalty. D.C. Code 1929, T. 25, § 528. *Golf, Inc. v. District of Columbia*, 67 F.2d 575, 1933 U.S. App. LEXIS 4550 (1933).

Homeowner did not act in good faith in presenting the proposed renovations to his property in piecemeal fashion, in demolishing his old garage and constructing a new garage without proper permits, or in building a new garage that was larger than the approved garage addition, and, thus, neighbor was not estopped from appealing issuance of building permits. *Sisson v. D.C. Bd. of Zoning Adjustment*, 805 A.2d 964, 2002 D.C. App. LEXIS 504 (2002).

Finding of board of zoning adjustment that building owners' applications for converting apartment units into hotel units were not grandfathered by applicable provision of zoning regulations that otherwise prohibited such conversion was clearly erroneous. *Page Associates v. District of Columbia*, 463 A.2d 649, 1983 D.C. App. LEXIS 406 (1983).

Even if refusal of zoning commissioners of District of Columbia to issue license to conduct rooming house to defendant was wrongful, defendant had no right to continue business without such license. Act March 1, 1920, § 2, 41 Stat. 500; D.C. Code 1951, §§ 5-412 et seq., 5-419. *Hagans v. District of Columbia*, 97 A.2d 922, 1953 D.C. App. LEXIS 151 (Cr.App. 1953).

An applicant for an occupancy permit under the Zoning Law is entitled to notice of action thereon with reasons therefor, but having been given notice of rejection with reasons, applicant had duty to cease the use applied for. D.C. Code 1940, § 5-401 et seq. *Savage v. District of Columbia*, 54 A.2d 562, 1947 D.C. App. LEXIS 153 (Cr.App. 1947).

Leases.

Use of premises by tenant for business purposes without attempt to obtain certificate of occupancy or home-office permit until tenant was notified that it was in violation of zoning laws, which use violated D.C. Code 1981, § 5-426 and D.C. Code 1973, § 5-422, and applicable regulations, was "unlawful use" within

terms of lease covenant prohibiting such use. *Entrepreneur, Ltd. v. Yasuna*, 498 A.2d 1151, 1985 D.C. App. LEXIS 501 (1985).

Both landlord and tenant which entered into lease for premises which it was contemplated would be used for business purposes were presumed to have known of zoning restrictions on business use of property, and that certificate of occupancy was required for any nonresidential use of property. D.C. Code 1981, § 5-426; D.C. Code 1973, § 5-422. *Entrepreneur, Ltd. v. Yasuna*, 498 A.2d 1151, 1985 D.C. App. LEXIS 501 (1985).

To be entitled to remain in possession and yet be relieved of full liability for rent, the tenant must prove that the landlord has transgressed a regulation which substantially and directly affects the habitability of the premises. D.C. Code §§ 5-422, 47-2301, 47-2328. *Curry v. Dunbar House, Inc.*, 362 A.2d 686, 1976 D.C. App. LEXIS 345 (1976).

Rent may not be avoided by a tenant solely because the landlord has failed to obtain certain licenses required by law. D.C. Code §§ 5-422, 47-2301, 47-2328. *Curry v. Dunbar House, Inc.*, 362 A.2d 686, 1976 D.C. App. LEXIS 345 (1976).

Since landlord did not deliberately avoid license procedures in an effort to avoid inspections and possible notification of violations, and since, instead, the landlord undertook repair work after receiving notice of existing illegal conditions, under those circumstances, equitable principles required that the tenants be relieved of their legal obligations to pay rent only to the extent that they actually were harmed. D.C. Code §§ 5-422, 47-2301, 47-2328. *Curry v. Dunbar House, Inc.*, 362 A.2d 686, 1976 D.C. App. LEXIS 345 (1976).

A landlord who operates premises in violation of the housing regulations is not thereby enjoined from maintaining an action to recover possession for nonpayment of rent; rather, the landlord's breach of the warranty of habitability, as measured by substantial violations of the housing code, can be interposed by a tenant as a defense, in whole or in part, to the landlord's claim that possession should be surrendered because rent is owed; moreover, if any violations of the regulations arise after the commencement of the lease, they do not serve to void the lease and render it unenforceable. D.C. Code §§ 5-422, 47-2301, 47-2328. *Curry v. Dunbar House, Inc.*, 362 A.2d 686, 1976 D.C. App. LEXIS 345 (1976).

A landlord's violation of law in failing to procure required licenses is not to be treated any differently than a violation of law in failing to meet the minimum standards of habitability; in neither case does a violation arising after the lease term has commenced void the contract, and in neither case does the failure to comply with statutory requirements deprive the land-

lord of his right to sue for possession for non-payment of rent. D.C. Code §§ 5-422, 47-2301, 47-2328. *Curry v. Dunbar House, Inc.*, 362 A.2d 686, 1976 D.C. App. LEXIS 345 (1976).

Values underlying the regulatory and licensing provisions for rental housing are protected adequately when a tenant is afforded the opportunity to prove housing code violations as evidence of a breach of the landlord's warranty of habitability, thereby defeating or forestalling possessory relief. D.C. Code §§ 5-422, 47-2301, 47-2328. *Curry v. Dunbar House, Inc.*, 362 A.2d 686, 1976 D.C. App. LEXIS 345 (1976).

Nuisance.

Zoning violation does not constitute nuisance per se. *B & W Management, Inc. v. Tasea Inv. Co.*, 451 A.2d 879, 1982 D.C. App. LEXIS 460 (1982).

As applied to land use, public nuisance theory provides common-law underpinning, subject to statutory modification, for injunctive and damage actions based on zoning violations. *B & W Management, Inc. v. Tasea Inv. Co.*, 451 A.2d 879, 1982 D.C. App. LEXIS 460 (1982).

Parties and standing.

Property owners have right to seek to enjoin a use or proposed use of nearby or neighboring land that is both unlawful and adversely affects their interests. *Brawner Bldg., Inc. v. Shehyn*, 442 F.2d 847, 1971 U.S. App. LEXIS 11721 (C.A.D.C. 1971).

An application by property owners to intervene in suit to enjoin zoning commission from carrying into effect a zoning order was timely even though final decree had been entered, where, because of failure of commission to appeal, intervention was necessary to protect property owners' right to appeal. D.C. Code, § 5-422; Fed.Rules Civ.Proc. rule 24(a), 18 U.S.C. *Wolpe v. Poretzky*, 144 F.2d 505, 1944 U.S. App. LEXIS 2867 (1944).

Preservationists, who sought to prevent developers from constructing international trade center in the District of Columbia to height of 130 feet, had no right of action under the Height of Buildings Act. D.C. Code 1981, § 5-405. *Techworld Dev. Corp. v. D.C. Preservation League*, 648 F. Supp. 106, 1986 U.S. Dist. LEXIS 21851 (1986), vacated by, remanded by 1987 U.S. App. LEXIS 18346 (D.C. Cir. June 2, 1987).

Federal Government's property interest in property, which was neighboring property to proposed site for international trade center in the District of Columbia, provided basis for Government to have right of action under the Height of Buildings Act to prevent developers from building center to height of 130 feet. D.C. Code 1981, § 5-405. *Techworld Dev. Corp. v. D.C. Preservation League*, 648 F. Supp. 106, 1986 U.S. Dist. LEXIS 21851 (1986), vacated

by, remanded by 1987 U.S. App. LEXIS 18346 (D.C. Cir. June 2, 1987).

Nonprofit corporation interested in the preservation of District of Columbia landmarks was entitled to intervene, by permission, in action brought by trustees of property as to which the corporation had filed application for designation at historic landmark challenging landmark designation statute and complaining that pendency of application deprived owners of use and enjoyment of the property and diminished its value. Fed.R.Civ.Proc. Rule 24(b), 18 U.S.C.; D.C. Code 1981, §§ 5-426, 5-1004(e), 5-1005(f). *Weinberg v. Barry*, 604 F. Supp. 390, 1985 U.S. Dist. LEXIS 21986 (1985).

Private plaintiff must assert special damage in order to enjoin zoning violation under statute governing building permits and certificates of occupancy. D.C. Code 1981, § 5-426. *Lund v. Watergate Investors Ltd. Pshp.*, 728 A.2d 77, 1999 D.C. App. LEXIS 77 (1999).

Residents of cooperative apartment building and building owner had standing, under statute governing building permits and certificates of occupancy, to seek injunctive relief and declaratory judgment against owners of complex in which building was located and manager of parking facility in complex, with respect to allegedly unreasonable or increased parking rates compared with that paid by parkers from other cooperative apartments in complex, and alleged denial of right to parking space at reasonable rate in reasonable proximity to apartment. D.C. Code 1981, § 5-426. *Lund v. Watergate Investors Ltd. Pshp.*, 728 A.2d 77, 1999 D.C. App. LEXIS 77 (1999).

Post-trial motions.

In prosecution for using premises without an occupancy permit, refusal to reopen case at instance of accused for taking of additional testimony which was merely cumulative of his own prior testimony was not an abuse of discretion. *Savage v. District of Columbia*, 54 A.2d 562, 1947 D.C. App. LEXIS 153 (Cr.App. 1947).

Presumptions and burden of proof.

To make out a case of estoppel barring neighbor's appeal of building permits issued to homeowner, homeowner needed to show that: (1) he acted in good faith, (2) he acted on affirmative acts of the Department of Consumer and Regulatory Affairs, (3) he made expensive and permanent improvements in reliance thereon, and (4) the equities strongly favored him. *Sisson v. D.C. Bd. of Zoning Adjustment*, 805 A.2d 964, 2002 D.C. App. LEXIS 504 (2002).

Although sole shareholder of corporate tenant testified that he was unaware of zoning regulations which precluded business use of premises absent certificate of occupancy and that he relied on advertisements that group of townhouses, of which real property was a part,

were suitable for home offices, knowledge of applicable law had to be imputed to him. D.C. Code 1981, § 5-426; D.C. Code 1973, § 5-422. *Entrepreneur, Ltd. v. Yasuna*, 498 A.2d 1151, 1985 D.C. App. LEXIS 501 (1985).

Regulations generally.

A regulation of the commissioners of the District of Columbia defining a rooming house for licensing purposes as a building occupied for a consideration by more than four persons who are not members of owner's immediate family was valid, notwithstanding statute relating to fire escapes and safety provisions defined a rooming house as a building in which rooms are rented and sleeping quarters are provided to accommodate 10 or more persons. D.C. Code 1940, §§ 1-226, 5-312(b), 11-772(a), 45-1601 et seq., 45-1607(b), 47-2301 et seq., 47-2344, 47-2345. *Savage v. District of Columbia*, 54 A.2d 562, 1947 D.C. App. LEXIS 153 (Cr.App. 1947).

Res judicata.

In suit to enjoin members of zoning commission from carrying into effect a zoning order, zoning commission, in absence of intervention by adjoining property owners, sufficiently represented their interests so that a decree setting aside zoning order would be binding upon them. D.C. Code 1940, §§ 5-414, 5-422. *Wolpe v. Poretsky*, 144 F.2d 505, 1944 U.S. App. LEXIS 2867 (1944).

In suit to enjoin members of zoning commission from carrying into effect a zoning order, zoning commission, in absence of intervention by adjoining property owners, sufficiently represented their interests so that a decree setting aside zoning order would be binding upon them. D.C. Code 1940, §§ 5-414, 5-422. *Wolpe v. Poretsky*, 144 F.2d 505, 1944 U.S. App. LEXIS 2867 (1944).

Review.

The failure of zoning commission to take appeal from order enjoining commission from enforcing a zoning order constituted "inadequate representation" of interests of adjoining property owners who were not parties to the proceeding within Federal Rule providing for intervention in case of inadequate representation of an applicant's interests. D.C. Code 1940, § 5-422; Fed.Rules Civ.Proc. rule 24(a), 18 U.S.C. *Wolpe v. Poretsky*, 144 F.2d 505, 1944 U.S. App. LEXIS 2867 (1944).

Where adjoining property owners had not been parties to suit to enjoin zoning commission from carrying into effect a zoning order and zoning commission had failed to appeal from final decree enjoining enforcement of order, property owners were entitled as a matter of right to intervene in the proceeding, since they would otherwise be bound by the decree. D.C. Code 1940, §§ 5-414, 5-422; Fed.Rules Civ.Proc. rule 24 (a), 18 U.S.C. *Wolpe v.*

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Poretsky, 144 F.2d 505, 1944 U.S. App. LEXIS 2867 (1944).

Greater discretion is vested in Board of Zoning Adjustment in granting or denying variance than there is in determining whether error had been committed by any official such as inspector of buildings, particularly where alleged error was of statutory interpretation. D.C. Code 1961, §§ 5-420, 5-422; Fed. Rules Civ. Proc. rule 8(f), 18 U.S.C. Hot Shoppes, Inc. v. Clouser, 231 F. Supp. 825, 1964 U.S. Dist. LEXIS 6657 (D.D.C.1964), affirmed by 346 F.2d 834, 120 U.S. App. D.C. 353, 1965 U.S. App. LEXIS 5604 (1965).

Commercial tenant's petition for judicial review, of Board of Zoning Adjustment's (BZA) decision affirming Department of Consumer and Regulatory Affairs' (DCRA) revocation of certificate of occupancy to use leased premises as automobile service center, was not moot, though DCRA issued new, superseding certificate of occupancy to tenant; new certificate, which merely reflected change of property ownership, was issued six weeks before DCRA issued its notice of intent to revoke original certificate, and as direct consequence of DCRA's revocation of original certificate, DCRA also revoked the new certificate. Kuri Bros. v. District of Columbia Bd. of Zoning Adjustment, 891 A.2d 241, 2006 D.C. App. LEXIS 24 (2006).

Homeowner's multiple building permits based on applications that were often incomplete or misleading as to plans for garage, rear addition, and front porch created exceptional circumstances that substantially impaired neighbor's ability to appeal and were outside of her control, and, thus, neighbor timely appealed issuance of building permits more than two months earlier; because of the cumulative, piecemeal nature of the applications, the full extent of the construction project could not be discerned as each individual permit was issued, and the neighbor was not chargeable with notice of the entire scope of work until all permits were issued. Sisson v. D.C. Bd. of Zoning Adjustment, 805 A.2d 964, 2002 D.C. App. LEXIS 504 (2002).

Neighbor's delay of several months before appealing building permits for homeowner's addition and garage renovation was not unreasonable, and, thus, laches did not bar appeal to Board of Zoning Adjustment; the delay resulted from the fact that the homeowner applied for

separate building permits for each component of the construction on his property. Sisson v. D.C. Bd. of Zoning Adjustment, 805 A.2d 964, 2002 D.C. App. LEXIS 504 (2002).

Sufficiency of evidence.

Evidence established that commercial tenant was operating an automobile repair garage, which was not allowed under certificate of occupancy allowing only "automobile service center"; inspectors from Department of Consumer and Regulatory Affairs (DCRA) testified that they saw automobile engine and other significant automotive repair work being done on tenant's premises on multiple occasions, and their testimony was corroborated by photographs of tenant's garage, copies of work orders, tenant's own business card, and advertisements and signage offering full range of auto repair services. Kuri Bros. v. District of Columbia Bd. of Zoning Adjustment, 891 A.2d 241, 2006 D.C. App. LEXIS 24 (2006).

Validity of permits.

On complaint of owners of property in a "general residence. . . medium density" zone that a community correctional center is not properly classified a "rooming house," the ultimate issue under the zoning regulations is whether the proposal is one to operate institutional buildings compatible with adjoining residential uses. Brawner Bldg., Inc. v. Shehyn, 442 F.2d 847, 1971 U.S. App. LEXIS 11721 (C.A.D.C. 1971).

University did not misrepresent its proposed law school's occupancy by stating in occupancy permit application that building would have a proposed occupancy level of 1,200 students, even though school's enrollment had 1,354 students; occupancy and enrollment in law school were two different things. D.C. Code 1981, § 5-426. Burka v. Aetna Life Ins. Co., 945 F. Supp. 313, 1996 U.S. Dist. LEXIS 16952 (1996).

Certificate of occupancy for "automobile service center" would not be construed to allow operation of automobile repair garage; property was in zone in which special exception or variance was required for repair garage, and thus, construing certificate as allowing repair garage would make certificate invalid and subject to revocation as having been issued in error. Kuri Bros. v. District of Columbia Bd. of Zoning Adjustment, 891 A.2d 241, 2006 D.C. App. LEXIS 24 (2006).

§ 6-641.10. Enforcement of zoning regulations.

(a) The Mayor of the District of Columbia shall enforce the regulations adopted under the authority of this subchapter. Nothing contained in this subchapter shall be construed to limit the authority of the Mayor or Council of the District of Columbia to make municipal regulations which are not

inconsistent with the provisions of this subchapter and the regulations adopted thereunder.

(b) If, pursuant to rules issued pursuant to this subchapter, the Zoning Commission approves a zoning 'density increase for a commercial office building or structure with a floor area ratio that is greater than the floor area ratio permitted as a matter of right under the zoning regulations, the applicant who obtains the zoning density increase shall be required to comply with the housing requirements set forth in section 308b of the Comprehensive Plan, as such requirements may be amended.

(June 20, 1938, 52 Stat. 801, ch. 534, § 11; Oct. 6, 1994, D.C. Law 10-193, § 3(d), 41 DCR 5536.)

Cross references. — Building regulations, power and duty of Council and Mayor to make and enforce, see § 1-303.04.

Prior Codifications. — 1981 Ed., § 5-427. 1973 Ed., § 5-423.

Legislative history of Law 10-193. — Law 10-193, the "Comprehensive Plan Amendments Act of 1994," was introduced in Council and assigned Bill No. 10-212, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 7, 1994, and June 21, 1994, respectively. Signed by the Mayor on August 8, 1994, it was assigned Act No. 10-323 and transmitted to both Houses of Congress for its review. D.C. Law 10-193 became effective on October 6, 1994.

Effective date. — Section 4(b) of D.C. Law 10-193 provided that no District element of the Comprehensive Plan for the National Capital shall take effect until it has been reviewed by the National Capital Planning Commission as provided in § 2-1002(a) and § 1-204.23.

References in text. — Section 308b of the Comprehensive Plan referred to in (b) is § 308b of Title 10 of the D.C. Municipal Regulations.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Consistency with provisions.
Construction and application.
Validity.

Consistency with provisions.

The Zoning Act, which repealed inconsistent acts in praesenti, operated immediately to deprive the Commissioners of the District of jurisdiction to enact building regulations in conflict with the jurisdiction conferred upon the zoning commission, so that such regulation was invalid, though the six months' period within which the zoning commission was required to act had not expired at the time of adoption of the Commissioners' regulation. *Schwartz v. Brownlow*, 270 F. 1019, 1921 U.S. App. LEXIS 2491 (1921).

The ordinance of the Commissioners of District of Columbia restricting the erection of business buildings in residence blocks, even if authorized by Act June 14, 1878, empowering them to make building regulations, was in direct conflict with Act March 1, 1920, creating a zoning commission to adopt regulations specifying among other things, the purposes for which buildings and premises in the several areas might be used, and repealing all laws in conflict therewith. *Schwartz v. Brownlow*, 270 F. 1019, 1921 U.S. App. LEXIS 2491 (1921).

Construction and application.

District of Columbia legislature's creation of a private right of action, under statute which granted standing to parties specially damaged by certain violations of the zoning laws to seek

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injunctive relief, did not either create a substantive right not provided by the Constitution or specific statute or substantially limit mayor's discretion to enforce zoning laws and regulations, as would support Fifth Amendment takings claim brought by association representing residential community, based on District of Columbia's failure to enforce zoning board's final order, which, *inter alia*, set limits on student enrollment and employment of faculty and staff, and required all full-time freshman and sophomore students to reside in university housing located within campus boundary. *Foggy Bottom Ass'n v. D.C. Office of Planning*, 441 F.Supp.2d 84, 2006 U.S. Dist. LEXIS 51487 (2006).

Validity.

For purposes of a Fifth Amendment takings

claim, members of association representing residential community had no property interest in having District of Columbia zoning laws and regulations, and zoning board's final order, which, *inter alia*, set limits on student enrollment and employment of faculty and staff, and required all full-time freshman and sophomore students to reside in university housing located within campus boundary, enforced against university, where District of Columbia's discretion in exercising its regulatory power was not subject to substantive judicial review, and District of Columbia law conferring on mayor the duty of enforcing zoning regulations did not mandate any particular enforcement action or outcome. *Foggy Bottom Ass'n v. D.C. Office of Planning*, 441 F.Supp.2d 84, 2006 U.S. Dist. LEXIS 51487 (2006).

§ 6-641.11. Construction.

Wherever the regulations made under the authority of this subchapter require a greater width or size of yards, courts, or other open spaces, or require a lower height of buildings or smaller number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in or under any other statute or municipal regulations, the regulations made under authority of said sections shall govern. Wherever the provisions of any other statute or municipal regulations require a greater width or size of yards, courts, or other open spaces or require a lower height of buildings or smaller number of stories or require a greater percentage of lot to be left unoccupied or impose other higher standards than are required by the regulations made under authority of said sections, the provisions of such other statute or municipal regulation shall govern.

(June 20, 1938, 52 Stat. 801, ch. 534, § 12.)

Prior Codifications. — 1981 Ed., § 5-428. 1973 Ed., § 5-424.

§ 6-641.12. Definitions.

The word “amend,” “amendment,” “amendments,” or “amended,” when used in this subchapter in relation to the zoning regulations, shall be deemed to include any modification of the text or phraseology of the regulations or of any provision of the regulations or any regulations or any repeal or elimination of any regulation or regulations or part thereof or any addition to the regulations or any new regulation or any change of or in the wording or content of the regulations. The word “amend,” “amendment,” “amendments,” or “amended,” when used in said sections in relation to the zoning maps or any map, shall be deemed to include any change in the number, shape, boundary, or area of any district or districts, any repeal or abolition of any such map or any part thereof, any addition to any such map, any new map or maps, or any other change in the maps or any map. The words “administrative decision,” “administrative

officer,” “administrative officer or body,” when used in § 6-641.07 shall not be deemed to include the Zoning Commission.

(June 20, 1938, 52 Stat. 801, ch. 534, § 13.)

Prior Codifications. — 1981 Ed., § 5-429. 1973 Ed., § 5-425.

§ 6-641.13. Appropriations authorized; compensation.

Appropriations are hereby authorized to carry out the provisions of this subchapter for the fiscal year ending June 30, 1938, and thereafter the Mayor of the District of Columbia is authorized and directed to include in his annual estimates such amounts as may be required for salaries and expenses incident to such purposes. Each member of the Zoning Commission and of the Board of Zoning Adjustment shall be entitled to receive compensation. Members of the Zoning Commission for the District of Columbia shall receive compensation in accordance with § 6-621.01(b). No compensation shall be paid to a member of the Board of Zoning Adjustment who is also a full-time officer or employee of the District of Columbia government or who serves on the Board of Zoning Adjustment as a federal government representative pursuant to § 6-641.07.

(June 20, 1938, 52 Stat. 802, ch. 534, § 14; Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a); May 13, 1975, D.C. Law 1-1, § 1, 21 DCR 3938; Mar. 3, 1979, D.C. Law 2-139, § 3205(nn), 25 DCR 57-40; Aug. 7, 1980, D.C. Law 3-81, § 2(gg), 27 DCR 2632; Sept. 29, 1988, D.C. Law 7-168, § 2, 35 DCR 5747.)

Cross references. — Merit system, effective date provisions, see § 1-636.02.

Taxes and license deposits, refunds, see § 47-1317 et seq.

Prior Codifications. — 1981 Ed., § 5-430. 1973 Ed., § 5-426.

Legislative history of Law 1-1. — Law 1-1, the “Zoning Commission and Zoning Board of Adjustment Compensation Act of 1975,” was introduced in Council and assigned Bill No. 1-5, which was referred to the Committee of the whole. The Bill was adopted on first and second readings on February 18, 1975, and March 4, 1975, respectively. Signed by the Mayor on March 10, 1975, it was assigned Act No. 1-2 and transmitted to both Houses of Congress for its review.

Legislative history of Law 2-139. — Law 2-139, the “District of Columbia Government Comprehensive Merit Personnel Act of 1978,” was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978, and October 31, 1978, respectively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-81. — Law 3-81, the “District of Columbia Government Comprehensive Merit Personnel Act of 1980,”

was introduced in Council and assigned Bill No. 3-236, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 22, 1980, and May 20, 1980, respectively. Signed by the Mayor on June 4, 1980, it was assigned Act No. 3-195 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-168. — Law 7-168, the “Zoning Commission and Board of Zoning Adjustment Compensation Amendment Act of 1988,” was introduced in Council and assigned Bill No. 7-512, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 28, 1988 and July 12, 1988, respectively. Signed by the Mayor on July 15, 1988, it was assigned Act No. 7-224 and transmitted to both Houses of Congress for its review.

Editor’s notes. — Application of § 2 of D.C. Law 7-168: Section 3 of D.C. Law 7-168 provided that the compensation provided for in § 2 shall be paid for services rendered on or after May 1, 1988.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of

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Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office

of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 6-641.14. Laws repealed.

The Act of March 1, 1920 (41 Stat. 500, ch. 92), excepting the provisions of § 6-621.01 creating the Zoning Commission, providing for its membership and service without additional compensation, are hereby repealed. All laws or parts of other laws in conflict with the provisions of this subchapter are hereby repealed.

(June 20, 1938, 52 Stat. 802, ch. 534, § 15.)

Prior Codifications. — 1981 Ed., § 5-431. 1973 Ed., § 5-427.

§ 6-641.15. Federal public buildings excepted from this subchapter.

The provisions of this subchapter shall not apply to federal public buildings; provided, however, that, in order to ensure the orderly development of the national capital, the location, height, bulk, number of stories, and size of federal public buildings in the District of Columbia and the provision for open space in and around the same will be subject to the approval of the National Capital Planning Commission.

(June 20, 1938, 52 Stat. 802, ch. 534, § 16.)

Cross references. — National Capital Planning Commission, proposed developments, projects and acquisitions, see § 2-1004.

Rental and utilization of public space, conditional authorization to construct structures, federal and district governments, see § 10-1121.11.

Prior Codifications. — 1981 Ed., § 5-432. 1973 Ed., § 5-428.

Transfer of Functions. — “National Capital Planning Commission” was substituted for “National Capital Park and Planning Commission” in the proviso in this section in view of the

Act of June 6, 1924, ch. 270, § 9, as added by the Act of July 19, 1952, 66 Stat. 790, ch. 949, § 1, which transferred the functions, powers, and duties of the National Capital Park and Planning Commission to the National Capital Planning Commission.

Editor’s notes. — This subchapter and subchapter V do not apply to buildings constructed on property transferred or conveyed pursuant to the Act of October 8, 1968, 82 Stat. 958, Pub. L. 90-553, as amended by the Act of May 25, 1982, 96 Stat. 101, Pub. L. 97-186.

Subchapter V. Chanceries.

§ 6-651.01. Transfer or use of chancery.

After October 13, 1964, no building or chancery being used by a foreign government in the District of Columbia shall be transferred to or used by another foreign government unless such use is in accordance with § 6-641.06,

as amended, or unless such use was in accordance with applicable law on October 13, 1964.

(Oct. 13, 1964, 78 Stat. 1092, Pub. L. 88-659, § 4; July 21, 1968, 82 Stat. 396, Pub. L. 90-412, § 1(b).)

Section references. — This section is referred to in §§ 6-641.03 and 6-651.02.

Prior Codifications. — 1981 Ed., § 5-421. 1973 Ed., § 5-418c.

§ 6-651.02. Discrimination against foreign government based on race, color, or creed prohibited.

Sections 6-651.01 and 6-651.02 shall not be administered in such a way as to discriminate against any foreign government on the basis of the race, color, or creed of any of its citizens.

(Oct. 13, 1964, 78 Stat. 1092, Pub. L. 88-659, § 5.)

Prior Codifications. — 1981 Ed., § 5-422. 1973 Ed., § 5-418d.

Subchapter VI. Miscellaneous.

§ 6-661.01. Mayor to prescribe fees for permits, certificates, and transcripts by Inspector of Buildings; schedule of fees to be displayed.

(a) Except as provided in subsection (b) of this section, the Mayor of the District of Columbia is hereby authorized and directed, from time to time, to prescribe a schedule of fees to be paid for permits, certificates, and transcripts of records issued by the Inspector of Buildings of the District of Columbia, for the erection, alteration, repair, or removal of buildings and their appurtenances, and for the location of certain establishments for which permits may be required under the building regulations of the District of Columbia, said fees to cover the cost and expense of the issuance of said permits and certificates and of the inspection of the work done under said permits; said schedule shall be printed and conspicuously displayed in the office of said Inspector of Buildings; said fees shall be paid to the Collector of Taxes of the District of Columbia and shall be deposited by him in the Treasury of the United States to the credit of the revenues of the District of Columbia.

(b) A child development home, as defined in § 4-401(3), shall be exempt from all fees relating to certificates of occupancy; other than reasonable fees charged for providing copies of a certificate of occupancy beyond the one certified copy of the certificate of occupancy to which the child development home is entitled free of charge.

(Mar. 3, 1909, 35 Stat. 689, ch. 250; Apr. 20, 1999, D.C. Law 12-255, § 2, 46 DCR 1279.)

Cross references. — Fees collected by District, disposition, see § 47-127.

Prior Codifications. — 1981 Ed., § 5-433. 1973 Ed., § 5-429.

Emergency legislation. — For temporary (90-day) amendment of section, see § 2 of the Child Development Home Promotion Emergency Amendment Act of 1998 (D.C. Act 12-444, October 9, 1998, 45 DCR 7304), and § 2 of the Child Development Home Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-604, January 20, 1999, 45 DCR 1281).

For temporary (90-day) amendment of section, see § 2 of the Child Development Home Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-57, April 16, 1999, 46 DCR 3862).

Legislative history of Law 12-255. — Law 12-255, the "Child Development Home Promotion Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-820, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on December 1, 1998 and December 15, 1998, respectively. Signed by the Mayor on December 29, 1998, it was assigned Act No. 12-603 and transmitted to both Houses of Congress for its review. D.C. Law 12-255 became effective on April 20, 1999.

Editor's notes. — Office of Inspector of Buildings abolished: Section 3 of the Act of December 20, 1944, 58 Stat. 822, ch. 611, transferred all the duties, powers, rights, and authority of the Inspector of Buildings of the District of Columbia to the Director of Inspection of the District of Columbia. The Department of Inspections was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 55 of the Board of Commissioners, dated June 30, 1953, and amended August 13, 1953, and December 17, 1953, established, under the direction and control of a Commissioner, a Department of Licenses and Inspections headed by a Director. The Order set out the purpose, organization, and functions of the new Department. The Order provided that all of the functions and positions of the following named organizations were transferred to the new Department of Licenses and Inspections: The Department of Inspections including the Engineering Section, the Building Inspection Section, the Electrical Section, the Elevator Inspection Section, the Fire Safety Inspection Section, the Plumbing Inspection Section, the Smoke and Boiler Inspection Section, and the Administrative Section, and similarly the Department of Weights, Measures and Markets, the License Bureau, the License Board, the License Committee, the Board of Special Appeals, the Board for the Condemnation of Dangerous and Unsafe Buildings, and the Central Permit Bureau. The Order provided that in accordance with the provisions of Reorganization Plan No. 5 of 1952, the named organiza-

tions were abolished. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions vested in the Department of Licenses and Inspection by Reorganization No. 55 were transferred to the Director of the Department of Economic Development by Commissioner's Order No. 69-96, dated March 7, 1969. The Department of Economic Development was replaced by Mayor's Order No. 78-42, dated February 17, 1978, which Order established the Department of Licenses, Investigation and Inspections. The Department of Licenses, Investigation and Inspections was transferred to the Department of Consumer and Regulatory Affairs by Reorganization Plan No. 1 of 1983.

Office of Collector of Taxes abolished: The Office of the Collector of Taxes was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Collector of Taxes including the functions of all officers, employees, and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3, dated August 28, 1952. Reorganization Order No. 20, dated November 10, 1952, transferred the functions of the Collector of Taxes to the Finance Office. The same Order provided for the Office of the Collector of Taxes headed by a Collector in the Finance Office, and abolished the previously existing Office of the Collector of Taxes. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, which provided that the Finance Office (consisting of the Office of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division) would continue under the direction and control of the Director of General Administration, and that the Treasury Division would perform the function of collecting revenues of the District of Columbia and depositing the same with the Treasurer of the United States. Organization Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner's Order No. 69-96, dated March 7, 1969.

Change in Government. — This section originated at a time when local government

powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat.

818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 6-661.02. Cancellation of building permits.

In any case where building permits have been issued and no work has been begun thereunder, the person who has paid the fee for said permit may return said permit for cancellation, and upon the cancellation thereof there shall be refunded to him, in the manner prescribed by law for the refunding of erroneously paid taxes, the amount of said fee less the actual expense incident to the issuance of said permit, as determined by the Inspector of Buildings; provided, that application for such refund shall be made within 6 months after the issuance of said permit.

(Mar. 2, 1911, 36 Stat. 967, ch. 192.)

Prior Codifications. — 1981 Ed., § 5-434. 1973 Ed., § 5-430.

HOUSING & BUILDING RESTRICTIONS & REGULATIONS

CHAPTER 7. FIRE SAFETY.

Subchapter I. General

PART A

Fire Escapes, Elevators, Stairways, Etc

Sec.

- 6-701.01. Fire escapes — Buildings used as dwellings; exceptions.
- 6-701.02. Fire escapes — Commercial buildings; access to escapes; hallway and stairway lights.
- 6-701.03. Duty of owner to provide fire safety measures.
- 6-701.03a. Fire safety requirements for high-rise buildings.
- 6-701.04. Regulations authorized for enforcement of part.
- 6-701.05. Elevators and stairways extending to basement; exemptions for certain office buildings.
- 6-701.06. Obstruction of halls and stairways.
- 6-701.07. Obstruction of fire escapes and approaches.
- 6-701.08. Violations of part.
- 6-701.09. Notice requiring provision of fire safety measures — Contents.
- 6-701.10. Notice requiring provision of fire safety measures — Service; failure of owner to comply.
- 6-701.11. Injunction to restrain use of building in violation of part.
- 6-701.12. Definitions.

PART B

Fees; Notices

- 6-703.01. Fees for inspection of buildings; fees for annual hauling permits for certain multi-axle motor vehicles.
- 6-703.02. Interstate agreement concerning hauling permit fees for certain multi-axle motor vehicles.
- 6-703.03. Regulations authorized concerning means of egress and fire safety appliances.
- 6-703.04. Occupancy after receipt of notice.
- 6-703.05. Notice requiring installation of means of egress or fire safety appliances.
- 6-703.06. Violation of §§ 6-703.03 to 6-703.09.
- 6-703.07. Service of notice.
- 6-703.08. Failure of owner to comply with notice.

Sec.

- 6-703.09. Injunction to restrain use of building in violation of §§ 6-703.03 to 6-703.09.

Subchapter II. Correcting Conditions Violative of Law

- 6-711.01. Mayor may correct conditions violative of law; assessment of cost; lien on property; fund to pay costs; summary corrective action of life-or-health threatening condition. [Transferred].
- 6-711.02. Inspection of buildings for violative conditions; interference with inspection.
- 6-711.03. Inspection of buildings for violative conditions; interference with inspection.

Subchapter III. Alterations to Rental Units Causing Violations of Housing Regulations After Notice to Vacate

- 6-731.01. Prohibited.
- 6-731.02. Exemption by consent of tenants.
- 6-731.03. Exemption by Mayor.
- 6-731.04. Penalty.

Subchapter IV. Smoke Detectors

- 6-751.01. Definitions.
- 6-751.02. General requirements.
- 6-751.02a. Visual alert systems.
- 6-751.03. Locations.
- 6-751.04. Equipment.
- 6-751.05. Installation.
- 6-751.05a. Smoke and carbon monoxide detector and battery program.
- 6-751.05b. Annual report on smoke and carbon monoxide detector and battery program.
- 6-751.05c. Acceptance of gifts and grants of smoke and carbon monoxide detectors, batteries, and funds; authority to purchase detectors and batteries.
- 6-751.06. Maintenance.
- 6-751.07. Permits.
- 6-751.08. Other applicable standards.
- 6-751.09. Civil penalties.
- 6-751.10. Installation by tenant.
- 6-751.11. Smoke detector and fire alarm notice.

Subchapter I. General.

PART A.

FIRE ESCAPES, ELEVATORS, STAIRWAYS, ETC.

§ 6-701.01. Fire escapes — Buildings used as dwellings; exceptions.

It shall be the duty of the owner entitled to the beneficial use, rental, or control of any building 3 or more stories in height, constructed or used or intended to be used as an apartment house, tenement house, flat, rooming house, lodging house, hotel, hospital, seminary, academy, school, college, institute, dormitory, asylum, sanitarium, hall, place of amusement, office building, or store, or of any building 3 or more stories in height, or over 30 feet in height, other than a private dwelling, in which sleeping quarters for the accommodation of 10 or more persons are provided above the 1st floor, to provide and cause to be erected and fixed to every such building 1 or more suitable fire escapes, connecting with each floor above the 1st floor by easily accessible and unobstructed openings, in such location and numbers and of such material, type, and construction as the Council of the District of Columbia may determine; except that buildings designed and built as single-family dwellings, and converted to use as apartment houses, in which not more than 3 families reside, including the owner or lessee, or rooming houses in which sleeping accommodations are provided for less than 10 persons above the 1st floor, not more than 3 stories nor more than 40 feet in height, and having a total floor area not more than 3,000 square feet above the 1st floor, shall be exempted from the provisions of this section; and except that buildings used solely as apartment houses, not more than 3 stories nor more than 40 feet in height, so arranged that not more than 5 apartments per floor open directly, without an intervening hall or corridor, on a fire-resistive stairway, 3 feet or more in width, enclosed with masonry walls in which fire-resistive doors are provided at all openings, shall be exempted from the provisions of this section.

(Mar. 19, 1906, 34 Stat. 70, ch. 957, § 1; Mar. 2, 1907, 34 Stat. 1247, ch. 2566, § 1; June 4, 1934, 48 Stat. 843, ch. 388.)

Cross references. — Building regulations, see § 1-303.04.

Section references. — This section is referred to in § 6-701.03.

Prior Codifications. — 1981 Ed., § 5-501. 1973 Ed., § 5-301.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(117)

of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and

§ 6-701.02 HOUSING & BUILDING RESTRICTIONS & REGULATIONS

the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)),

appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Actions and proceedings.

In general.

Landlord and tenant.

Notice.

Actions and proceedings.

Evidence of landlord's failure to comply with statutes and regulations thereunder relative to stair treads and lights in hallways and stairways of apartment buildings, while not conclusive of landlord's negligence, held evidence of negligence sufficient to take case to jury in tenant's action for injuries resulting from fall on common stairs (D.C. Code 1929, T. 25, §§ 294, 296; Act of June 14, 1878, 20 Stat. 131). *Hill v. Raymond*, 81 F.2d 278, 1935 U.S. App. LEXIS 3978 (1935).

Contributory negligence of tenant in apartment building who fell while using common unlighted stairs, without providing himself with a light, and with knowledge of landlord's failure to provide lights, as required by statute and municipal regulations, held question for jury (D.C. Code 1929, T. 25, §§ 294, 296; Act of June 14, 1878, 20 Stat. 131). *Hill v. Raymond*, 81 F.2d 278, 1935 U.S. App. LEXIS 3978 (1935).

Where, after institution of landlord's action for possession based on allegedly unlawful use of leased premises, rigid provisions of District of Columbia Fire Escape Act were relaxed and after entry of judgment for landlord district commissioners modified Building Code so that use complained of, which was the very use contemplated under original letting, was no longer unlawful, case was not "moot" and tenant was entitled on appeal to protection of the new law and to reversal of judgment for landlord. D.C. Code 1940, §§ 5-301, 5-317. *Cosby v.*

Shoemaker, 34 A.2d 27, 1943 D.C. App. LEXIS 186 (Cr.App. 1943).

In general.

Statute requiring owner to install and maintain hall and stairway lights in apartment houses and regulations of District commissioners pursuant thereto held applicable to buildings erected prior to passage of act. D.C. Code 1929, T. 25, § 296. *Hill v. Raymond*, 81 F.2d 278, 1935 U.S. App. LEXIS 3978 (1935).

Landlord and tenant.

Under Act Cong. March 19, 1906, as amended by Act Cong. March 2, 1907 (D.C. Code 1929, T. 25, § 294), requiring the owner, entitled to the beneficial use, rental, or control of specified buildings, to erect fire escapes, which before amendment made the lessee, occupant, or person having possession also liable to its provisions, a tenant is not required to erect a fire escape, and he cannot, in the absence of any action prejudicial to his rights, voluntarily erect fire escapes and recover therefor from the landlord. *Goldwyn Distributing Corp. v. Carroll*, 276 F. 63, 1921 U.S. App. LEXIS 2041 (1921).

Notice.

It is a prerequisite to any proceedings under Act March 19, 1906, as amended by Act March 2, 1907, D.C. Code 1929, T. 25, § 294 et seq., requiring an erection of fire escapes, that commissioners, under Act March 19, 1906, § 10, D.C. Code 1929, T. 25, § 303 first determine character and number of fire escapes required, and that defendant be given an opportunity to install them. *Moore's Victoria Theatre Co. v. District of Columbia*, 299 F. 923, 1924 U.S. App. LEXIS 3493 (1924).

§ 6-701.02. Fire escapes — Commercial buildings; access to escapes; hallway and stairway lights.

It shall be the duty of the owner entitled to the beneficial use, rental, or control of any building already erected, or which may hereafter be erected, in which 10 or more persons are employed at the same time in any of the stories above the 2nd story, except 3-story buildings used exclusively as stores or for office purposes, and having at least 2 stairways from the ground floor each 3 or more feet wide and separated from each other by a distance of at least 30 feet, from 1 of which stairways shall be easy access to the roof, to provide and cause to be erected and affixed thereto a sufficient number of the aforesaid fire escapes, the location and number of the same to be determined by the Mayor

of the District of Columbia, and to keep the hallways and stairways in every such building as is used and occupied at night properly lighted, to the satisfaction of the Mayor, from sunset to sunrise.

(Mar. 19, 1906, 34 Stat. 70, ch. 957, § 2; Mar. 2, 1907, 34 Stat. 1247, ch. 2566; June 4, 1934, 48 Stat. 843, ch. 388.)

Section references. — This section is referred to in §§ 6-701.03 to 6-701.06 and 6-701.08 to 6-701.12.

Prior Codifications. — 1981 Ed., § 5-502. 1973 Ed., § 5-302.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Actions and proceedings.
In general.

Actions and proceedings.

Evidence of landlord's failure to comply with statutes and regulations thereunder relative to stair treads and lights in hallways and stairways of apartment buildings, while not conclusive of landlord's negligence, held evidence of negligence sufficient to take case to jury in tenant's action for injuries resulting from fall on common stairs (D.C. Code 1929, T. 25, §§ 294, 296; Act of June 14, 1878, 20 Stat. 131). *Hill v. Raymond*, 81 F.2d 278, 1935 U.S. App. LEXIS 3978 (1935).

Contributory negligence of tenant in apart-

ment building who fell while using common unlighted stairs, without providing himself with a light, and with knowledge of landlord's failure to provide lights, as required by statute and municipal regulations, held question for jury (D.C. Code 1929, T. 25, §§ 294, 296; Act of June 14, 1878, 20 Stat. 131). *Hill v. Raymond*, 81 F.2d 278, 1935 U.S. App. LEXIS 3978 (1935).

In general.

Statute requiring owner to install and maintain hall and stairway lights in apartment houses and regulations of District commissioners pursuant thereto held applicable to buildings erected prior to passage of act. D.C. Code 1929, T. 25, § 296. *Hill v. Raymond*, 81 F.2d 278, 1935 U.S. App. LEXIS 3978 (1935).

§ 6-701.03. Duty of owner to provide fire safety measures.

It shall be the duty of the owner entitled to the beneficial use, rental, or control of any building used or intended to be used as set forth in § 6-701.01 where fire escapes are required, or any building in which 10 or more persons are employed, as set forth in § 6-701.02, where fire escapes are required, also to provide, install, and maintain therein proper and sufficient guide signs, guide lights, exit lights, hall and stairway lights, standpipes, fire extinguishers, and alarm gongs and striking stations in such locations and numbers and of such type and character as the Mayor of the District of Columbia may determine; except that in buildings less than 6 stories in height, standpipes will not be required when fire extinguishers are installed in such numbers and of such type and character as the Mayor of the District of Columbia may determine.

§ 6-701.03a HOUSING & BUILDING RESTRICTIONS & REGULATIONS

(Mar. 19, 1906, 34 Stat. 70, ch. 957, § 3; Mar. 2, 1907, 34 Stat. 1247, ch. 2566; June 4, 1934, 48 Stat. 843, ch. 388.)

Cross references. — Fire Protection Study Commission, see § 3-1101 et seq.

Prior Codifications. — 1981 Ed., § 5-503. 1973 Ed., § 5-303.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2, of Fire Alarm Notice and Tenant Fire Safety Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-314, February 22, 2010, 57 DCR 1649).

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of

Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 6-701.03a. Fire safety requirements for high-rise buildings.

(a) The owner of a high-rise building shall:

(1) Prepare and maintain a fire safety and evacuation plan for the building; and

(2) Conduct fire drills at least once every 12 months.

(b) A violation of this section shall be subject to civil penalties as established by the Mayor pursuant to rulemaking.

(c) For the purposes of this section, the term “high-rise building” shall mean any building having occupied floors more than 75 feet above the lowest level of fire department vehicle access.

(Mar. 19, 1906, ch. 957, § 3a, as added Mar. 11, 2010, D.C. Law 18-116, § 2, 57 DCR 893.)

Legislative history of Law 18-116. — Law 18-116, the “Fire Alarm Notice and Tenant Fire Safety Amendment Act of 2009”, was introduced in Council and assigned Bill No. 18-178, which was referred to the Committee on Public Safety and the Judiciary. The bill was adopted on first and second readings on December 1, 2009, and December 15, 2009, respectively. Signed by the Mayor on January 11, 2010, it

was assigned Act No. 18-264 and transmitted to both Houses of Congress for its review. D.C. Law 18-116 became effective on March 11, 2010.

Delegation of Authority. — Delegation of Authority under the Fire Alarm Notice and Tenant Fire Safety Emergency Amendment Act of 2009, see Mayor’s Order 2009-101, June 12, 2009 (56 DCR 6844).

§ 6-701.04. Regulations authorized for enforcement of part.

The Mayor of the District of Columbia is hereby authorized and directed to issue such orders and the Council of the District of Columbia is hereby authorized and directed to adopt, and the Mayor to enforce, such regulations not inconsistent with law as may be necessary to accomplish the purposes and carry into effect the provisions of this part, and the Mayor is hereby authorized

and directed to require any alterations or changes that may become necessary in buildings now or hereafter erected, in order properly to locate or relocate fire escapes, or to afford access to fire escapes, and to require any changes or alterations in any building that may be necessary in order to provide for the erection of additional fire escapes, or for the installation of other appliances required by this part, when in the judgment of the Mayor such additional fire escapes or appliances are necessary.

(Mar. 19, 1906, 34 Stat. 71, ch. 957, § 4; June 4, 1934, 48 Stat. 844, ch. 388.)

Cross references. — Rules and regulations, Council and Mayor, power to make and enforce, see §§ 1-303.03 and 1-303.04.

Prior Codifications. — 1981 Ed., § 5-504. 1973 Ed., § 5-304.

Editor's notes. — Development of model construction codes: See Act of July 1, 1983, D.C. Law 5-15, 30 DCR 2661.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(118) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 6-701.05. Elevators and stairways extending to basement; exemptions for certain office buildings.

(a) Each elevator shaft and stairway extending to the basement of the buildings heretofore mentioned shall terminate in a fireproof compartment or enclosure separating the elevator shaft and stairs from other parts of the basement, and no opening shall be made or maintained in such compartment or enclosure unless the same be provided with fireproof doors.

(b) Such buildings as are used solely for office buildings above the 2nd floor and defined under the building regulations of the District of Columbia to be fireproof are exempted from the requirements of this part as to fire escapes, guide signs, and alarm gongs; but when the face of a wall of any such fireproof building is within 30 feet of a combustible building or structure, or when the side or sides, front or rear of such building or structure faces within 30 feet of a combustible building, or contains a light or air shaft or similar recess within 30 feet of a combustible building, then each and every window or opening in said wall or walls shall be protected from fire by automatic iron shutters or wire glass in fireproof sash and frames.

(Mar. 19, 1906, 34 Stat. 71, ch. 957, § 5; Mar. 2, 1907, 34 Stat. 1247, ch. 2566; June 4, 1934, 48 Stat. 844, ch. 388.)

Cross references. — Regulation of elevators, general powers of Council, see § 1-303.44.

Prior Codifications. — 1981 Ed., § 5-505. 1973 Ed., § 5-305.

§ 6-701.06 HOUSING & BUILDING RESTRICTIONS & REGULATIONS

§ 6-701.06. Obstruction of halls and stairways.

It shall be unlawful to obstruct any hall, passageway, corridor, or stairway in any building enumerated in this part with baggage, trunks, furniture, cans, or with any other thing whatsoever.

(Mar. 19, 1906, 34 Stat. 71, ch. 957, § 6; June 4, 1934, 48 Stat. 844, ch. 388.)

Prior Codifications. — 1981 Ed., § 5-506. 1973 Ed., § 5-306.

§ 6-701.07. Obstruction of fire escapes and approaches.

No door or window leading to any fire escape shall be covered or obstructed by any fixed grating or barrier, and no person shall at any time place any encumbrance or obstacle upon any fire escape or upon any platform, ladder, or stairway leading to or from any fire escape.

(Mar. 19, 1906, 34 Stat. 71, ch. 957, § 7; June 4, 1934, 48 Stat. 844, ch. 388.)

Prior Codifications. — 1981 Ed., § 5-507. 1973 Ed., § 5-307.

§ 6-701.08. Violations of part.

Any person failing or neglecting to provide fire escapes, guide signs, guide lights, exit lights, hall and stairway lights, standpipes, fire extinguishers, alarm gongs, and striking stations, or other appliances required by this part, after notice from the Mayor of the District of Columbia so to do, shall, upon conviction thereof, be punished by a fine of not less than \$10 nor more than \$100 and shall be punished by a further fine of \$5 for each day that he fails to comply with such notice. Any person violating any other provision of this part or regulations promulgated hereunder shall be punished, upon conviction thereof, by a fine of not less than \$10 nor more than \$100 for each offense.

(Mar. 19, 1906, 34 Stat. 71, ch. 957, § 8; June 4, 1934, 48 Stat. 845, ch. 388.)

Prior Codifications. — 1981 Ed., § 5-508. 1973 Ed., § 5-308.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Actions and proceedings.
Apartments.

Notice.

Actions and proceedings.

Whether premises on which violations of

rooming house regulations allegedly occurred were within the operation of such regulations though licensed as an apartment house could not be determined on motion to quash information. D.C. Code 1940, §§ 5-312, 47-2329. District of Columbia v. Basiliko, 44 A.2d 407, 1945 D.C. App. LEXIS 127 (Cr.App. 1945).

Apartments.

That premises were licensed as an apartment house did not preclude prosecution for violations of rooming house regulations which allegedly occurred on such premises. D.C. Code 1940, §§ 5-312, 47-2329. District of Colum-

bia v. Basiliko, 44 A.2d 407, 1945 D.C. App. LEXIS 127 (Cr.App. 1945).

Notice.

It is a prerequisite to any proceedings under Act March 19, 1906, as amended by Act March 2, 1907, D.C. Code 1929, T. 25, § 294 et seq., requiring an erection of fire escapes, that commissioners, under Act March 19, 1906, § 10, D.C. Code 1929, T. 25, § 303 first determine character and number of fire escapes required, and that defendant be given an opportunity to install them. Moore's Victoria Theatre Co. v. District of Columbia, 299 F. 923, 1924 U.S. App. LEXIS 3493 (1924).

§ 6-701.09. Notice requiring provision of fire safety measures — Contents.

The notice from the Mayor of the District of Columbia requiring the erection of fire escapes and other appliances enumerated in this part shall specify the character and number of fire escapes or other appliances to be provided, the location of the same, and the time within which said fire escapes or other appliances shall be provided, and in no case shall more than 90 days be allowed for compliance with said notice unless the Mayor shall, in his discretion, deem it necessary to extend their time.

(Mar. 19, 1906, 34 Stat. 71, ch. 957, § 9; June 4, 1934, 48 Stat. 845, ch. 388.)

Section references. — This section is referred to in § 6-701.10.

Prior Codifications. — 1981 Ed., § 5-509. 1973 Ed., § 5-309.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

Necessity of notice.

It is a prerequisite to any proceedings under Act March 19, 1906, as amended by Act March 2, 1907, D.C. Code 1929, T. 25, § 294 et seq., requiring an erection of fire escapes, that commissioners, under Act March 19, 1906, § 10,

D.C. Code 1929, T. 25, § 303 first determine character and number of fire escapes required, and that defendant be given an opportunity to install them. Moore's Victoria Theatre Co. v. District of Columbia, 299 F. 923, 1924 U.S. App. LEXIS 3493 (1924).

§ 6-701.10. Notice requiring provision of fire safety measures — Service; failure of owner to comply.

Such notice shall be deemed to have been served if delivered to the person to be notified, or if left with any adult person at the usual residence or place of

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business of the person to be notified in the District of Columbia, or if no such residence or place of business can be found in said District by reasonable search, if left with any adult person at the office of any agent of the person to be notified, provided such agent has any authority or duty with reference to the building to which said notice relates, or if no such office can be found in said District by reasonable search if forwarded by registered mail or by certified mail to the last known address of the person to be notified and not returned by the post office authorities, or if no address be known or can by reasonable diligence be ascertained, or if any notice forwarded as authorized by the preceding clause of this section be returned by the post office authorities, if published on 10 consecutive days in a daily newspaper published in the District of Columbia, or if by reason of an outstanding unrecorded transfer of title the name of the owner in fact cannot be ascertained beyond a reasonable doubt, if served on the owner of record in the manner hereinbefore in this section provided, or if delivered to the agent, trustee, executor, or other legal representative of the estate of such person. Any notice to a corporation shall, for the purposes of this part, be deemed to have been served on such corporation if served on the president, secretary, treasurer, general manager, or any principal officer of such corporation in the manner hereinbefore provided for the service of notices on natural persons holding property in their own right, and notice to a foreign corporation shall, for the purposes of this part, be deemed to have been served if served on any agent of such corporation personally, or if left with any person of suitable age and discretion residing at the usual residence or employed at the usual place of business of such agent in the District of Columbia; provided, that in case of failure or refusal of the owner entitled to the beneficial use, rental, or control of any buildings specified in this part, to comply with the requirements of the notice provided for in § 6-701.09, the Mayor of the District of Columbia is hereby empowered and it is his duty to cause such erection of fire escapes and other appliances mentioned in the notice provided for, and he is hereby authorized to assess the costs thereof as a tax against the buildings on which they are erected and the ground on which the same stands, and to issue tax-lien certificates against such building and grounds for the amount of such assessments, bearing interest at the rate of 10% per annum, which certificates may be turned over by the Mayor of the District of Columbia to the contractor for doing the work.

(Mar. 19, 1906, 34 Stat. 71, ch. 957, § 10; Mar. 2, 1907, 34 Stat. 1248, ch. 2566, § 1; June 4, 1934, 48 Stat. 845, ch. 388; June 11, 1960, 74 Stat. 203, Pub. L. 86-507, § 1(42).)

Cross references. — Documentary evidence, prima facie evidence of delivery, certified mail return receipts, see § 14-506.

Prior Codifications. — 1981 Ed., § 5-510. 1973 Ed., § 5-310.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of

Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office

of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia,

respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 6-701.11. Injunction to restrain use of building in violation of part.

The Superior Court of the District of Columbia, in term time or in vacation, may, upon a petition of the District of Columbia, filed by its Mayor, issue an injunction to restrain the use or occupation of any building in the District of Columbia in violation of any of the provisions of this part.

(Mar. 19, 1906, 34 Stat. 72, ch. 957, § 11; June 4, 1934, 48 Stat. 846, ch. 388; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 571, Pub. L. 91-358, title I, § 155(c)(16).)

Prior Codifications. — 1981 Ed., § 5-511. 1973 Ed., § 5-311.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 6-701.12. Definitions.

As used in this part:

(1) The terms “apartment house,” “tenement house,” and “flat” mean a building in which rooms in suites are provided for occupancy by 3 or more families.

(2) The term “rooming house” means a building in which rooms are rented and sleeping quarters provided to accommodate 10 or more persons, not including the family of the owner or lessee.

(3) The term “lodging house” means a building in which sleeping quarters are provided to accommodate 10 or more transients.

(4) The term “hotel” means a building in which meals are served and rooms are provided for the accommodation of 10 or more transients.

(5) The term “elevator shaft” includes a dumbwaiter shaft.

(6) The term “fire escape” means an exterior open stairway or arrangement of ladders constructed entirely of incombustible materials and of approved design, or an interior or exterior stairway of fire-resistive construction with enclosing walls of masonry with fire-resistive doors and windows.

(7) The term “standpipe” means a vertical iron or steel pipe provided with hose connections and valves, so arranged as to supply water for firefighting purposes.

(8) The terms “fireproof” and “fire-resistive” have the same meaning as is

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ascribed to the term "fire-resistive" in the Building Code approved pursuant to the Construction Codes Approval and Amendments Act of 1986.

(Mar. 19, 1906, ch. 957, § 12; June 4, 1934, 48 Stat. 846, ch. 388; Mar. 21, 1987, D.C. Law 6-216, § 13(d), 34 DCR 1072.)

Section references. — This section is referred to in §§ 6-701.04 to 6-701.06, and 6-701.08 to 6-701.11.

Prior Codifications. — 1981 Ed., § 5-512.
1973 Ed., § 5-312.

Legislative history of Law 6-216. — Law 6-216, the "Construction Codes Approval and Amendments Act of 1986," was introduced in Council and assigned Bill No. 6-500, which was referred to the Committee of the Whole. The

Bill was adopted on first and second readings on November 18, 1986, and December 16, 1986, respectively. Signed by the Mayor on February 2, 1987, it was assigned Act No. 6-279 and transmitted to both Houses of Congress for its review.

References in text. — The "Construction Codes Approval and Amendments Act of 1986," referred to in paragraph (8), is D.C. Law 6-216.

PART B.

FEES; NOTICES.

§ 6-703.01. Fees for inspection of buildings; fees for annual hauling permits for certain multi-axle motor vehicles.

(a) The Mayor of the District of Columbia is authorized and directed, from time to time, to prescribe a schedule of fees to be paid for inspecting passenger elevators and for inspecting hotels, public halls, moving-picture shows, theaters, and other places of amusement which are required to have annual licenses, and for inspecting buildings which are required by law to have fire escapes; and he is further authorized and directed to impose fees for all inspections of service to be performed by any public officer or employee of the District of Columbia under any law or regulation in force July 11, 1919, or thereafter enacted; said fees to cover the cost and expense of such inspections or service; and a schedule of such fees shall be printed and conspicuously displayed in the office of the said Mayor, and said fees shall be paid to the Collector of Taxes, District of Columbia, and paid for each fiscal year into the General Fund of the District of Columbia. Notwithstanding the provisions of the preceding sentence, in the case of a single unit motor vehicle which has 3 or more axles and is designed to unload itself and which is operated in the District of Columbia under an annual hauling permit of the District of Columbia, the fee for such permit shall be as follows:

- (1) \$680 if such motor vehicle is first placed in service after July 1, 1970;
- (2) If such motor vehicle is in service on or before July 1, 1970, and operated at a gross weight:
 - (A) In excess of the weight permitted under normal operations under applicable regulations of the Mayor of the District of Columbia but less than 50,000 pounds, a fee of \$380;
 - (B) Of 50,000 pounds or more but less than 55,000 pounds, a fee of \$480;

(C) Of 55,000 pounds or more but less than 60,000 pounds, a fee of \$580;

or

(D) Of 60,000 pounds or more, not to exceed 65,000 pounds, a fee of \$680.

(b) The Mayor of the District of Columbia is authorized to increase, from time to time, the fees prescribed by paragraphs (1) and (2) of subsection (a) of this section, taking into account expenditures for the purpose of repairing or replacing highway structures and roadway pavements requiring such repair or replacement as a result of the operation of the motor vehicles for which hauling permit fees are prescribed under the preceding sentence. Proceeds from fees from annual hauling permits for such vehicles shall be deposited in the highway fund created by § 47-2301.

(July 11, 1919, 41 Stat. 69, ch. 7; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7; June 28, 1944, 58 Stat. 533, ch. 300, § 18; Jan. 5, 1971, 84 Stat. 1930, Pub. L. 91-650, title I, § 104(a); May 10, 1989, D.C. Law 7-231, § 17, 36 DCR 492; Sept. 14, 2011, D.C. Law 19-21, § 9036, 58 DCR 6226.)

Cross references. — Fees collected by District, disposition, see § 47

Prior Codifications. — 1981 Ed., § 5-516.
1973 Ed., § 5-316.

Effect of amendments. — D.C. Law 19-21, in subsec. (a), substituted “General Fund” for “Treasury of the United States to the credit of the General Fund”.

Legislative history of Law 7-231. — Law 7-231, the “Technical Amendments Act of 1988,” was introduced in Council and assigned Bill No. 7-586, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 29, 1988, and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-285 and transmitted to both Houses of Congress for its review.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 6-226.

Delegation of Authority. — Delegation of authority pursuant to An Act Making Appropriations to Provide for the Expenses of the Government of D.C. for the FY Ending June 30, 1920 and for Other Purposes; and to the License Fees and Charges Act of 1976, see Mayor’s Order 99-158, October 13,

Editor’s notes. — Office of Collector of Taxes abolished: The Office of the Collector of Taxes was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. All functions of the Office of the Collector of Taxes including the functions of all officers, employees and subordinate agencies were transferred to the Director, Department of General Administration by Reorganization Order No. 3, dated August 28, 1952. Reorganization Order No. 20, dated November

10, 1952, transferred the functions of the Collector of Taxes to the Finance Office. The same Order provided for the Office of the Collector of Taxes headed by a Collector in the Finance Office and abolished the previously existing Office of the Collector of Taxes. Reorganization Order No. 20 was superseded and replaced by Organization Order No. 121, dated December 12, 1957, which provided that the Finance Office, consisting of the Office of the Finance Officer, Property Tax Division, Revenue Division, Treasury Division, Accounting Division, and Data Processing Division, would continue under the direction and control of the Director of General Administration, and that the Treasury Division would perform the function of collecting revenues of the District of Columbia and depositing the same with the Treasurer of the United States. Organization Order No. 121 was revoked by Organization Order No. 3, dated December 13, 1967, Part IVC of which prescribed the functions of the Finance Office within a newly established Department of General Administration. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions of the Finance Office as stated in Part IVC of Organization Order No. 3 were transferred to the Director of the Department of Finance and Revenue by Commissioner’s Order No. 69-96 dated March 7, 1969.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of

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Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office

of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 6-703.02. Interstate agreement concerning hauling permit fees for certain multi-axle motor vehicles.

The Mayor of the District of Columbia may enter into an interstate agreement with the Commonwealth of Virginia or with the State of Maryland, or with both, which shall stipulate that any person: (1) who operates in the District of Columbia and in the state which is a party to the agreement a single unit motor vehicle which has 3 or more axles and which is designed to unload itself; (2) who has registered that motor vehicle in the District of Columbia or in that state; and (3) who but for the agreement is required to pay the fee for an annual hauling permit prescribed by § 6-703.01, and a similar fee imposed on the motor vehicle by that state, shall not be required to pay a fee described in clause (3) of this section which is imposed by a jurisdiction other than the jurisdiction in which the motor vehicle is registered. If the Mayor enters into an interstate agreement under this section, he may adjust the annual hauling permit fees of the District of Columbia referred to in clause (3) of this section so that the total amount of fees (including registration and inspection fees) required for the operation in the District of Columbia and in each state which is a party to such agreement of the vehicles referred to in clause (1) of this section shall be uniform.

(June 30, 1972, 86 Stat. 392, Pub. L. 92-327, § 1.)

Cross references. — Motor vehicles and traffic, operators' permits, registration, exemption of nonresidents, see § 50-1401.02.

Prior Codifications. — 1981 Ed., § 5-517. 1973 Ed., § 5-316a.

§ 6-703.03. Regulations authorized concerning means of egress and fire safety appliances.

The Council of the District of Columbia, for protection against fire, is hereby authorized, after public hearing, to promulgate regulations to require the owner entitled to the beneficial use, rental, or control of any building now existing or hereafter erected, other than a private dwelling, which is 3 or more stories or over 30 feet in height, or is used as a hospital, school, asylum, sanitarium, convalescent home, or for similar use, or as a place of amusement, public assembly, restaurant, or for similar use, to provide, install and maintain sufficient and suitable means of egress, guide signs, guide lights, exit lights, hall and stairway lights, standpipes, fire extinguishers, alarm gongs and striking stations, and such other appliances as the Council may deem necessary for such buildings.

(Dec. 24, 1942, 56 Stat. 1083, ch. 818, § 1.)

Section references. — This section is referred to in §§ 6-703.04 to 6-703.09.

Prior Codifications. — 1981 Ed., § 5-518. 1973 Ed., § 5-317.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(119) Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia

Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 6-703.04. Occupancy after receipt of notice.

It shall be unlawful for any person to occupy any building 30 days after notice in writing from the Mayor of the District of Columbia or his designated agents that the owner entitled to the beneficial use, rental, or control of any building has failed or neglected to comply with the notice provided for by § 6-703.05 to provide any such building with means of egress or appliances required by the regulations promulgated by the Council of the District of Columbia under § 6-703.03.

(Dec. 24, 1942, 56 Stat. 1083, ch. 812, § 2.)

Section references. — This section is referred to in §§ 6-703.06 to 6-703.09.

Prior Codifications. — 1981 Ed., § 5-519. 1973 Ed., § 5-318.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 6-703.05. Notice requiring installation of means of egress or fire safety appliances.

The notice from the Mayor of the District of Columbia requiring the erection of means of egress and other appliances required by the regulations promulgated under § 6-703.03 shall specify the character and number of means of egress or other appliances to be provided, the location of the same, and the time within which said means of egress or other appliances shall be provided, and in no case shall more than 90 days be allowed for compliance with said notice unless the Mayor shall, in his discretion, deem it necessary to extend their time.

(Dec. 24, 1942, 56 Stat. 1084, ch. 818, § 3.)

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Section references. — This section is referred to in §§ 6-703.04, 6-703.06 to 6-703.09, and 47-2802.

Prior Codifications. — 1981 Ed., § 5-520. 1973 Ed., § 5-319.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 6-703.06. Violation of §§ 6-703.03 to 6-703.09.

Any owner entitled to the beneficial use, rental, or control of any building failing or neglecting to provide means of egress, guide signs, guide lights, exit lights, hall and stairway lights, standpipes, fire extinguishers, alarm gongs and striking stations, or other appliances required by the regulations promulgated under §§ 6-703.03 to 6-703.09 after notice from the Mayor of the District of Columbia or his designated agents so to do, shall, upon conviction thereof, be punished by a fine of not less than \$10 nor more than \$100 per day for each and every day he fails to comply with such notice. Any person violating any other provision of §§ 6-703.03 to 6-703.09 or regulations promulgated hereunder shall be punished, upon conviction thereof, by a fine of not less than \$10 nor more than \$100 per day for each and every day such violation exists.

(Dec. 24, 1942, 56 Stat. 1084, ch. 818, § 4.)

Section references. — This section is referred to in §§ 6-703.07 to 6-703.09.

Prior Codifications. — 1981 Ed., § 5-521. 1973 Ed., § 5-320.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 6-703.07. Service of notice.

Any notice required by §§ 6-703.03 to 6-703.09 shall be deemed to have been served if delivered to the person to be notified or left with any adult person at the usual residence or place of business of the person to be notified in the District of Columbia, or, if no such residence or place of business can be found in said District of Columbia by reasonable search, if left with any adult person at the office of any agent of the person to be notified, provided such agent has any authority or duty with reference to the building to which said notice relates, or, if no such office can be found in said District, by reasonable search,

if forwarded by registered mail or by certified mail to the last known address of the person to be notified and not returned by the post office authorities, or, if no address be known or can by reasonable diligence be ascertained, or if any notice forwarded as authorized by the preceding clause of this section be returned by the post office authorities, if published on 10 consecutive days in a daily newspaper published in the District of Columbia, or, if by reason of an outstanding unrecorded transfer of title, the name of the owner in fact cannot be ascertained beyond a reasonable doubt, if served on the owner of record in the manner hereinbefore provided or delivered to the agent, trustee, executor, or other legal representative of the estate of such person. Any notice to a corporation shall, for the purposes of §§ 6-703.03 to 6-703.09, be deemed to have been served on such corporation if served on the president, secretary, treasurer, general manager, or any principal officer of such corporation in the manner hereinbefore provided for the services of notices on natural persons holding property in their own right, or if no such officer can be found in said District by reasonable search, then by publication for 10 consecutive days in a daily newspaper published in the District of Columbia, and notice to a foreign corporation shall, for the purposes of §§ 6-703.03 to 6-703.09, be deemed to have been served if served on any agent of such corporation personally or if left with any person of suitable age and discretion residing at the usual residence or employed at the usual place of business of such agent in the District of Columbia, or if published on 10 consecutive days in a daily newspaper published in the District of Columbia.

(Dec. 24, 1942, 56 Stat. 1084, ch. 818, § 5; June 11, 1960, 74 Stat. 203, Pub. L. 86-507, § 1(44).)

Cross references. — Documentary evidence, prima facie evidence of delivery, certified mail return receipts, see § 14-506.

Section references. — This section is re-

ferred to in §§ 6-703.06, 6-703.08, 6-703.09, and 47-2802.

Prior Codifications. — 1981 Ed., § 5-522. 1973 Ed., § 5-321.

§ 6-703.08. Failure of owner to comply with notice.

In case of failure or refusal of the owner entitled to the beneficial use, rental, or control of any building required by the regulations promulgated under §§ 6-703.03 to 6-703.09 to comply with the requirements of the notice provided for in § 6-703.05, the Mayor of the District of Columbia or his designated agents are hereby empowered to cause such construction and installation of means of egress and other appliances mentioned in the notice provided for, and the Mayor is hereby authorized to assess the costs thereof as a tax against the buildings on which they are erected and the ground on which the same stands, said assessment to bear interest at the rate and be collected in the manner provided in § 47-1205.

(Dec. 24, 1942, 56 Stat. 1084, ch. 818, § 6.)

Section references. — This section is referred to in §§ 6-703.06, 6-703.07, and 6-703.09.

Prior Codifications. — 1981 Ed., § 5-523.

1973 Ed., § 5-322.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commis-

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sioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat.

818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 6-703.09. Injunction to restrain use of building in violation of §§ 6-703.03 to 6-703.09.

The Superior Court of the District of Columbia, in term time or in vacation, may upon a petition of the District of Columbia filed by its said Mayor, issue an injunction to restrain the use or occupation of any building in the District of Columbia in violation of any of the provisions of §§ 6-703.03 to 6-703.09 or of the regulations promulgated under §§ 6-703.03 to 6-703.09 by the owner, lessee, or occupant.

(Dec. 24, 1942, 56 Stat. 1085, ch. 818, § 7; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 571, Pub. L. 91-358, title I, § 155(c)(17).)

Section references. — This section is referred to in §§ 6-703.06 to 6-703.08 and 47-2802.

Prior Codifications. — 1981 Ed., § 5-524.
1973 Ed., § 5-323.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of

the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

Subchapter II. Correcting Conditions Violative of Law.

§ 6-711.01. Mayor may correct conditions violative of law; assessment of cost; lien on property; fund to pay costs; summary corrective action of life-or-health threatening condition. [Transferred].

Recodified as § 42-3131.01.

(Apr. 14, 1906, 34 Stat. 114, ch. 1626, § 1; Jan. 5, 1980, D.C. Law 3-45, § 2, 26 DCR 2305; June 14, 1980, D.C. Law 3-70, § 7(m), 27 DCR 1776; Mar. 10, 1983, D.C. Law 4-205, § 2, 30 DCR 188; Oct. 20, 1988, D.C. Law 7-177, § 8, 35 DCR 6158; Feb. 27, 1998, D.C. Law 12-52, § 2, 44 DCR 6226; Mar. 26, 1999, D.C. Law 12-201, § 2, 45 DCR 8410.)

§ 6-711.02. Inspection of buildings for violative conditions; interference with inspection.

Recodified as § 42-3131.02. *

(Apr. 14, 1906, 34 Stat. 115, ch. 1626, § 2.)

§ 6-711.03. Inspection of buildings for violative conditions; interference with inspection.

Recodified as § 42-3131.03.

(Apr. 14, 1906, 34 Stat. 115, ch. 1626, § 3; June 11, 1960, 74 Stat. 203, Pub. L. 86-507, § 1(43).)

Subchapter III. Alterations to Rental Units Causing Violations of Housing Regulations After Notice to Vacate.

§ 6-731.01. Prohibited.

Notwithstanding any other provision of law except §§ 6-731.02 and 6-731.03, no person shall, during the period of time after the giving of a notice to vacate any rental unit (as defined by Chapter 35 of Title 42) and before the actual vacation of such unit, cause any alteration to the structure, plumbing apparatus, or electrical apparatus of the housing accommodation (as defined by Chapter 35 of Title 42) in which such unit is located, the result of which alteration is to cause such rental unit to come to be in substantial violation (or, if already in substantial violation, to be in greater violation) of the housing regulations of the District of Columbia for a period of time in excess of 24 hours; provided, that it shall not be a defense to an allegation of a violation of this section that the notice to vacate was invalid.

(Apr. 23, 1977, D.C. Law 1-129, § 2, 23 DCR 9693.)

Section references. — This section is referred to in §§ 6-731.02 to 6-731.04.

Prior Codifications. — 1981 Ed., § 5-525. 1973 Ed., § 5-324.

Legislative history of Law 1-129. — Law 1-129, the “Act to Preserve the Habitability of Rental Units Subject to Notices to Vacate” was introduced in Council and assigned Bill No. 1-360, which was referred to the Committee on Housing and Urban Development. The Bill was adopted on first and second readings on October 12, 1976, and November 23, 1976, respec-

tively. Enacted without signature by the Mayor on January 9, 1977, it was assigned Act No. 1-223 and transmitted to both Houses of Congress for its review.

References in text. — The references to “Chapter 35 of Title 42” originally read “Chapter 15 of Title 45” [1981 Ed.]; however, the provisions of former § 45-1551 [1981 Ed.] expired and have been superseded by the provisions of § 42-3504.01. See notes to §§ 42-4051 and 42-3504.01.

§ 6-731.02. Exemption by consent of tenants.

Section 6-731.01 shall not apply to any person performing any alteration upon any housing accommodation if the tenants of unvacated rental units, which are the subject of notices to vacate and which can reasonably be expected to be caused by the alteration to come to be in substantial violation

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(or, if already in substantial violation, to be in greater violation) of the housing regulations of the District of Columbia for a period of time in excess of 24 hours, agree in writing to the alteration after receiving written notice of the alteration and its effect upon the habitability of the affected units.

(Apr. 23, 1977, D.C. Law 1-129, § 3, 23 DCR 9693.)

Section references. — This section is referred to in § 6-731.01.

Prior Codifications. — 1981 Ed., § 5-526.
1973 Ed., § 5-325.

Legislative history of Law 1-129. — For legislative history of D.C. Law 1-129, see Historical and Statutory Notes following § 6-731.01.

§ 6-731.03. Exemption by Mayor.

The Mayor of the District of Columbia, or his designee, may grant an exemption from the provisions of § 6-731.01 in the event he, or his designee, inspects a housing accommodation wherein there are unvacated units subject to a notice to vacate and finds that a proposed alteration, while it may cause such a rental unit to come to be in substantial violation (or, if already in substantial violation, to be in greater violation) of the housing regulations of the District of Columbia for a period of time in excess of 24 hours, is, nevertheless, necessary for the immediate safety of the habitants of the accommodation.

(Apr. 23, 1977, D.C. Law 1-129, § 4, 23 DCR 9693.)

Section references. — This section is referred to in § 6-731.01.

Prior Codifications. — 1981 Ed., § 5-527.
1973 Ed., § 5-326.

Legislative history of Law 1-129. — For legislative history of D.C. Law 1-129, see Historical and Statutory Notes following § 6-731.01.

§ 6-731.04. Penalty.

Any person violating § 6-731.01 shall be imprisoned for not more than 10 days, fined not more than \$300, or both.

(Apr. 23, 1977, D.C. Law 1-129, § 5, 23 DCR 9693.)

Prior Codifications. — 1981 Ed., § 5-528.
1973 Ed., § 5-327.

Legislative history of Law 1-129. — For

legislative history of D.C. Law 1-129, see Historical and Statutory Notes following § 6-731.01.

Subchapter IV. Smoke Detectors.

§ 6-751.01. Definitions.

As used in this subchapter:

(1) The term "dwelling unit" means a structure, building, area, room, or combination of rooms occupied by persons for sleeping or living.

(2)(A) The term "hospital" means a building or part thereof used for the medical, psychiatric, obstetrical, or surgical care, on a 24-hour basis, of inpatients.

(B) The term "hospital" includes general hospitals, mental hospitals,

tuberculosis hospitals, children's hospitals, and any such facilities providing inpatient care.

(3)(A) The term "nursing home" means a building, or part thereof, used for the lodging, boarding, and nursing care, on a 24-hour basis, of persons who, because of mental or physical incapacity, may be unable to provide for their own needs and safety without the assistance of another person.

(B) The term "nursing home" includes nursing and convalescent homes, skilled nursing facilities, intermediate care facilities, and infirmaries of homes for the aged.

(4)(A) The term "owner" means any person who, alone or jointly or severally with other persons, has legal title to any premises.

(B) The term "owner" includes any person who has charge, care, or control over any premises as:

(i) An agent, officer, fiduciary, or employee of the owner;

(ii) The committee, conservator, or legal guardian of an owner who is non compos mentis, a minor, or otherwise under a disability;

(iii) A trustee, elected or appointed, or a person required by law to execute a trust, other than a trustee under a deed of trust, to secure the payment of money; or

(iv) An executor, administrator, receiver, fiduciary, officer appointed by any court, or other similar representative of the owner or his estate.

(C) The term "owner" does not include a lessee, sublessee, or other person who merely has the right to occupy or possess a premises.

(5)(A) The term "residential-custodial care facility" means a building, or part thereof, used for the lodging or boarding of persons who are incapable of self-preservation because of age or physical or mental limitation, or who are detained for correctional purposes.

(B) The term "residential-custodial care facility" includes homes for the aged, nurseries (custodial care for children under 6 years of age), institutions for persons with mental retardation (care institutions), and halfway houses, as well as sheltered living facilities and halfway houses operated by the District of Columbia Department of Corrections and District of Columbia Department of Human Resources.

(C) The term "residential-custodial care facility" does not include day care facilities that do not provide lodging or boarding for institutional occupants.

(6)(A) The term "sleeping area" means a bedroom or room intended for sleeping, or a combination of bedrooms or rooms intended for sleeping within a dwelling unit, which are located on the same floor and are not separated by another habitable room, such as a living room, dining room, or kitchen, but not a bathroom, hallway, or closet. A dwelling unit may have more than 1 sleeping area.

(B) The term "sleeping area" does not include common usage areas in structures with more than 1 dwelling unit, such as corridors, lobbies, and basements.

(7) The term "smoke detector" means a device which detects visible or invisible particles of combustion.

(8) The term “substantially rehabilitated” means any improvement to a structure which is valued greater than one-half of the assessed valuation of the property including the land.

(9) The term “visual alert system” means a visual warning device or system that, when activated by or in conjunction with an audible smoke detector and warning system, provides a light signal sufficient to warn a deaf or hearing-impaired person of the presence of fire or smoke. The term “visual alert system” shall include a visual warning system that has multiple functions if 1 of the functions of the system is to warn a deaf or hearing-impaired person of the presence of fire or smoke.

(June 20, 1978, D.C. Law 2-81, § 2, 24 DCR 9050; Mar. 9, 1988, D.C. Law 7-84, § 2(a), 34 DCR 8122; Apr. 24, 2007, D.C. Law 16-305, § 20, 53 DCR 6198.)

Prior Codifications. — 1981 Ed., § 5-529.
1973 Ed., § 5-328.

Effect of amendments. — D.C. Law 16-305, in par. (5)(B), substituted “persons with mental retardation” for “the mentally retarded”.

Legislative history of Law 2-81. — Law 2-81, the “Smoke Detector Act of 1978,” was introduced in Council and assigned Bill No. 2-157, which was referred to the Committee on the Judiciary. The Bill was adopted on first and

second readings on February 21, 1978, and March 7, 1978, respectively. Signed by the Mayor on April 17, 1978, it was assigned Act No. 2-178 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-84. — For legislative history of D.C. Law 7-84, see Historical and Statutory Notes following § 6-751.02a.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 6-201.

§ 6-751.02. General requirements.

(a) The owner of each new or existing dwelling unit, hotel, motel, hospital, nursing home, and residential-custodial care facility shall install smoke detectors as required by this subchapter. The Mayor shall install smoke detectors in each dwelling unit, hospital, nursing home, jail, prison, and residential-custodial care facility owned by the District of Columbia.

(b) The owner of each dwelling unit, hotel, motel, hospital, nursing home, jail, prison, and residential-custodial care facility which is constructed or substantially rehabilitated under a building permit issued after September 30, 1978, shall install smoke detectors as required by this subchapter. No certificate of occupancy may be issued for any dwelling unit, hotel, motel, hospital, nursing home, or residential-custodial care facility unless smoke detectors have been installed as required by this subchapter.

(c) The owner of each dwelling unit, hotel, motel, and hospital, except as provided in subsections (b) and (d) of this section, shall install smoke detectors as required by this subchapter within 3 years of June 20, 1978.

(d) The Mayor shall install smoke detectors, as required by this subchapter, in each dwelling unit, hospital, jail and prison owned by the District of Columbia, except as provided in subsection (b) of this section, within 2 years of June 20, 1978.

(e) Except as provided in subsection (b) and except as provided in § 14(d) of title VII of the Health Care and Community Residence Facilities Regulation, enacted June 14, 1974 (Reg. No. 74-15):

(1) The owner of each residential-custodial care facility and nursing home

shall install smoke detectors as required by this subchapter by January 1, 1980;

(2) The Mayor shall install smoke detectors as required by this subchapter in each residential-custodial care facility and nursing home owned by the District of Columbia by January 1, 1980.

(June 20, 1978, D.C. Law 2-81, § 3, 24 DCR 9050; Dec. 21, 1979, D.C. Law 3-42, § 2(a)-(e), 26 DCR 2082.)

Prior Codifications. — 1981 Ed., § 5-530. 1973 Ed., § 5-329.

Legislative history of Law 2-81. — For legislative history of D.C. Law 2-81, see Historical and Statutory Notes following § 6-751.01.

Legislative history of Law 3-42. — Law 3-42, the “Regulation Enforcement and Fire Safety Amendment Act of 1979,” was introduced in Council and assigned Bill No. 3-150,

which was referred to the Committee on the Judiciary and the Committee on Human Resources. The Bill was adopted on first and second readings on September 25, 1979, and October 9, 1979, respectively. Signed by the Mayor on October 30, 1979, it was assigned Act No. 3-114 and transmitted to both Houses of Congress for its review.

§ 6-751.02a. Visual alert systems.

(a)(1) The owner of each hotel or motel shall have available on the premises at least 1 visual alert system for every 50 units or less.

(2) Each hotel or motel shall provide a visual alert system to any guest or patron upon request. In circumstances in which the number of requests for visual alert systems exceeds the number of visual alert systems available, the hotel or motel shall make arrangements to procure additional systems, which shall be provided to the guest or patron within 8 hours of his or her request.

(3) A notice informing guests and patrons of the availability of visual alert systems for deaf or hearing-impaired persons shall be posted either conspicuously in the lobby of the hotel or motel or placed conspicuously in the room of each guest or patron.

(b) Upon the request of a deaf or hearing-impaired person, the owner of each dwelling unit, hospital, nursing home, or residential-custodial care facility shall provide a visual alert system in each room in which a deaf or hearing-impaired person resides.

(c) Upon the request of a deaf or hearing-impaired person, the Mayor shall provide a visual alert system in each dwelling unit, hospital, nursing home, jail, prison, or residential-custodial care facility owned by the District of Columbia in which a deaf or hearing-impaired person resides.

(June 20, 1978, D.C. Law 2-81, § 3a, as added Mar. 9, 1988, D.C. Law 7-84, § 2(b), 34 DCR 8122.)

Prior Codifications. — 1981 Ed., § 5-530.1.

Legislative history of Law 7-84. — Law 7-84, the “Visual Alert Systems for the Deaf and Hearing-Impaired Amendment Act of 1987,” was introduced in Council and assigned Bill No. 7-96, which was referred to the Committee

on the Judiciary. The Bill was adopted on first and second readings on November 10, 1987 and November 24, 1987, respectively. Signed by the Mayor on December 10, 1987, it was assigned Act No 7-119 and transmitted to both Houses of Congress for its review.

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§ 6-751.03. Locations.

(a) The owner of each dwelling unit shall install at least 1 smoke detector to protect each sleeping area. In an efficiency, the owner shall install the smoke detector in the room used for sleeping. In all other dwelling units, the owner shall install the smoke detector outside the bedrooms but in the immediate vicinity of the sleeping area.

(b) The owner of each hotel and motel shall install at least 1 smoke detector to protect each guest room or guest suite. The owner of each dormitory shall install at least 1 smoke detector to protect each resident room or resident suite. For the purpose of this subsection, "guest suite" or "resident suite" means a combination of rooms that are always occupied as a single unit. The owner of the hotel, motel or dormitory shall install the smoke detectors as directed by the Mayor of the District of Columbia.

(c) The owner of each hospital, nursing home, jail, prison, and residential-custodial care facility shall install smoke detectors as directed by the Mayor of the District of Columbia and as follows:

(1) In each corridor that is adjacent to a room used for sleeping, but in no case may the smoke detectors be spaced further apart than 30 feet or more than 15 feet from any wall; or

(2) In each room used for sleeping.

(d) An owner subject to this subchapter shall install each smoke detector on the ceiling at a minimum of 6 inches from the wall, or on a wall at a minimum of 6 inches from the ceiling.

(e) An owner subject to this subchapter may not install a smoke detector in a dead air space, such as where the ceiling meets the wall.

(June 20, 1978, D.C. Law 2-81, § 4, 24 DCR 9050; Dec. 21, 1979, D.C. Law 3-42, § 2(f), (g), 26 DCR 2082.)

Prior Codifications. — 1981 Ed., § 5-531.
1973 Ed., § 5-330.

Legislative history of Law 2-81. — For legislative history of D.C. Law 2-81, see Historical and Statutory Notes following § 6-751.01.

Legislative history of Law 3-42. — For legislative history of D.C. Law 3-42, see Historical and Statutory Notes following § 6-751.02.

§ 6-751.04. Equipment.

(a) An owner subject to this subchapter shall install a smoke detector which is capable of sensing visible or invisible particles of combustion and emitting an audible signal. The owner shall install a smoke detector which is of a type approved by the Mayor of the District of Columbia consistent with any appropriate federal regulations. The owner shall install a smoke detector in accordance with specifications of the manufacturer or in compliance with the National Fire Protection Association Standards 72-E and 74 (1974 Edition).

(b) Within 40 days after June 20, 1978, and before approving any type of smoke detector pursuant to this section, the Mayor of the District of Columbia or his designated agent shall hold a public hearing at which he shall consider, in addition to any other matter he considers relevant, any potential radiolog-

ical danger presented by any of the types of smoke detectors under consideration.

(June 20, 1978, D.C. Law 2-81, § 5, 24 DCR 9050; Dec. 21, 1979, D.C. Law 3-42, § 2(g), 26 DCR 2082.)

Section references. — This section is referred to in §§ 6-751.01, 6-751.02, 6-751.03, 6-751.06, and 6-751.08 to 6-751.10.

Prior Codifications. — 1981 Ed., § 5-532. 1973 Ed., § 5-331.

Legislative history of Law 2-81. — For

legislative history of D.C. Law 2-81, see Historical and Statutory Notes following § 6-751.01.

Legislative history of Law 3-42. — For legislative history of D.C. Law 3-42, see Historical and Statutory Notes following § 6-751.02.

§ 6-751.05. Installation.

(a) Except as provided in subsections (b) and (c) of this section, the owner of each dwelling unit, hotel, motel, hospital, nursing home, jail, prison, and residential-custodial care facility shall directly wire the smoke detector to the power supply of the building.

(b) In each dwelling unit, hotel, motel, hospital, nursing home, jail, prison, and residential-custodial care facility which is in existence on September 30, 1978, or which is constructed under a building permit issued before October 1, 1978, or which is substantially rehabilitated, the owner may install a smoke detector which operates from a plug-in outlet fitted with a plug restrainer device if the outlet is not controlled by an on-off switch and if the cord connecting the smoke detector with the outlet is not controlled by an on-off switch.

(c) In each dwelling unit in a structure with only 1 dwelling unit which is in existence on September 30, 1978, or which is constructed under a building permit issued before October 1, 1978, or which is substantially rehabilitated, the owner may install a monitored battery-powered smoke detector.

(June 20, 1978, D.C. Law 2-81, § 6, 24 DCR 9050.)

Prior Codifications. — 1981 Ed., § 5-533. 1973 Ed., § 5-332.

Temporary Amendment of Section. — Section 2 of D.C. Law 18-22 added subsec. (d) to read as follows:

“(d)(1) Within 30 days of the effective date of the Fire Alarm Notice and Tenant Fire Safety Emergency Amendment Act of 2009, passed on emergency basis on March 3, 2009 (Enrolled version of Bill 18-168), and in addition to any existing requirements in law or regulation, an owner of a building containing 2 or more dwelling or rooming units shall provide written notice, in a language delineated by the Language Access Act of 2004, effective June 19, 2004 (D.C. Law 15-167; D.C. Official Code § 2-1931 et seq.), as necessary, to each tenant by first class mail, and post notice in conspicuous places in common areas of the building, as required in this subsection. Written notice shall also be provided to each new tenant, as required in this

subsection. The Mayor shall provide a sample form of the notice required by this subsection.

“(2) The written notice shall include, at a minimum, instructions on the operation of a building fire alarm, whether this alarm is separate from the smoke alarms in individual apartments, and a statement that the building alarm is not necessarily connected to the fire department or emergency rescue, and that, in the event of a fire, they must be contacted immediately by calling 911.

“(3) Failure to post notice as required by this subsection shall be a violation of this act, and subject to penalties as provided in this act.

“(4) In addition to the notice required by this subsection, the owner, or the owner’s agent, shall maintain a fire safety plan and conduct fire drills in each building that is subject to the provisions of this subsection, and contains 5 or more units, at least once every 12 months.”

Section 4(b) of D.C. Law 18-22 provided that

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the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2 of Fire Alarm Notice and Tenant Fire Safety Emergency Amendment Act of 2009 (D.C. Act 18-33, March 16, 2009, 56 DCR 2340).

For temporary (90 day) amendment of sec-

tion, see § 2 of Fire Alarm Notice and Tenant Fire Safety Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-110, June 18, 2009, 56 DCR 4936).

Legislative history of Law 2-81. — For legislative history of D.C. Law 2-81, see Historical and Statutory Notes following § 6-751.01.

§ 6-751.05a. Smoke and carbon monoxide detector and battery program.

(a) The Mayor shall develop a program to test and install smoke and carbon monoxide detectors and batteries in District residences, and to educate District residents on the use of the detectors. The program shall be re-developed annually. The program may include:

- (1) Door-to-door outreach;
- (2) A public information campaign, including printed and mass media materials, or community events in each ward of the District;
- (3) The provision or installation of a smoke or combination smoke/carbon monoxide detector in a person's residence; and
- (4) Detector installation by personnel of the Fire and Emergency Medical Services Department, other District personnel, or such other persons who are willing to provide this service at no cost on behalf of the District.

(b) The program shall specify that any person who agrees to receive and install a smoke or combination smoke/carbon monoxide detector shall permit a representative of the Fire and Emergency Medical Services Department to inspect the installation of the unit to confirm that the installation occurred and was done properly.

(c) Any resident or property owner participating in the program shall indemnify and hold harmless the District, its officers, employees, agents, and assigns for the provision and installation of the smoke or combination smoke/carbon monoxide detectors or batteries.

(June 20, 1978, D.C. Law 2-81, § 6a, as added Mar. 20, 2009, D.C. Law 17-313, § 2, 56 DCR 37.)

Legislative history of Law 17-313. — Law 17-313, the "Smoke and Carbon Monoxide Detector Program Amendment Act of 2008", was introduced in Council and assigned Bill No. 17-594 which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on Novem-

ber 18, 2008, and December 2, 2008, respectively. Signed by the Mayor on December 19, 2008, it was assigned Act No. 17-613 and transmitted to both Houses of Congress for its review. D.C. Law 17-313 became effective on March 20, 2009.

§ 6-751.05b. Annual report on smoke and carbon monoxide detector and battery program.

(a)(1) No later than December 31st of each year, the Mayor shall provide to the Council an annual report on the smoke and carbon monoxide detector and battery program for the previous fiscal year.

(2) The annual report on the smoke and carbon monoxide detector and

battery program may be included in an annual report of the Fire and Emergency Medical Services Department if the annual report is issued by December 31st following the end of the fiscal year.

(b) The annual report shall include the following information, pertaining to the fiscal year:

- (1) Number of smoke and carbon monoxide detectors installed;
- (2) Amount of monetary donations received;
- (3) Amount of in-kind donations received;
- (4) Number of hours contributed by Fire and Emergency Medical Services Department personnel in developing and implementing this program;
- (5) Statistics on the number of fires in the District, including information on the number of fires with no smoke detectors or less than fully functional smoke detectors; and
- (6) Additional information regarding the effectiveness of the program.

(June 20, 1978, D.C. Law 2-81, § 6b, as added Mar. 20, 2009, D.C. Law 17-313, § 2, 56 DCR 37.)

Legislative history of Law 17-313. — For Law 17-313, see notes following § 6-751.05a.

§ 6-751.05c. Acceptance of gifts and grants of smoke and carbon monoxide detectors, batteries, and funds; authority to purchase detectors and batteries.

Notwithstanding any other provision of law, the Mayor may accept gifts and grants of smoke and carbon monoxide detectors, batteries, and funds to conduct a program to provide detectors and batteries free of charge to residents of the District, and to install or arrange for the installation of detectors free of charge to residents. The Mayor may use donated funds to purchase or contract to purchase smoke and carbon monoxide detectors and batteries to conduct the program. The funding source for such contracts shall include any funds annually appropriated for this purpose, any funds accepted under this section, and block grant and other grant monies as available.

(June 20, 1978, D.C. Law 2-81, § 6c, as added Mar. 20, 2009, D.C. Law 17-313, § 2, 56 DCR 37.)

Legislative history of Law 17-313. — For Law 17-313, see notes following § 6-751.05a.

§ 6-751.06. Maintenance.

An owner subject to this subchapter shall maintain each smoke detector in a reliable operating condition and shall make periodic inspections and tests to ensure that each smoke detector is in proper working condition.

(June 20, 1978, D.C. Law 2-81, § 7, 24 DCR 9050.)

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Section references. — This section is referred to in §§ 6-751.01 to 6-751.04 and 6-751.08 to 6-751.10.

Prior Codifications. — 1981 Ed., § 5-534.

1973 Ed., § 5-333.

Legislative history of Law 2-81. — For legislative history of D.C. Law 2-81, see Historical and Statutory Notes following § 6-751.01.

§ 6-751.07. Permits.

No owner may permanently wire a smoke detector to the electrical system of a structure without first obtaining an electrical permit from the Permit Division of the Department of Licenses, Investigation and Inspections.

(June 20, 1978, D.C. Law 2-81, § 8, 24 DCR 9050.)

Prior Codifications. — 1981 Ed., § 5-535.

1973 Ed., § 5-334.

Legislative history of Law 2-81. — For

legislative history of D.C. Law 2-81, see Historical and Statutory Notes following § 6-751.01.

§ 6-751.08. Other applicable standards.

Any person who installs a smoke detector shall comply with the requirements of this subchapter and the National Fire Protection Association Standards 72-E and 74 (1974 Edition). In the event of a conflict between this subchapter and the National Fire Protection Association Standards 72-E and 74 (1974 Edition), this subchapter takes precedence.

(June 20, 1978, D.C. Law 2-81, § 9, 24 DCR 9050.)

Section references. — This section is referred to in §§ 6-751.01 to 6-751.04, 6-751.06, 6-751.09, and 6-751.10.

Prior Codifications. — 1981 Ed., § 5-536.

1973 Ed., § 5-335.

Legislative history of Law 2-81. — For legislative history of D.C. Law 2-81, see Historical and Statutory Notes following § 6-751.01.

§ 6-751.09. Civil penalties.

(a)(1) An owner of a single-family residence who fails to comply with the provisions of this subchapter shall be assessed a civil penalty of \$100 for each violation.

(2) An owner of a building containing 2, 3, or 4 dwelling or rooming units who fails to comply with the provisions of this subchapter shall be assessed a civil fine of \$200 for each violation.

(3) An owner of a building containing 5 or more dwelling units or any hotel, motel, hospital, nursing home, or residential custodial care facility unit who fails to comply with the provisions of this subchapter shall be assessed a civil penalty of \$300 for each violation.

(b) For the purpose of this section, each day a dwelling unit, hotel, motel, hospital, nursing home, or residential custodial care facility fails to comply with this subchapter shall constitute a separate violation.

(c)(1) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of this subchapter, or any rules or regulations issued under the authority of this subchapter, pursuant to Chapter 18 of Title 2. Adjudication of any infraction of this subchapter shall be pursuant to Chapter 18 of Title 2.

(2) After a 45-day period of Council review, the Mayor shall issue the procedures described in paragraph (1) of this subsection pursuant to subchapter I of Chapter 5 of Title 2, provided that the Council of the District of Columbia does not disapprove the rules, by resolution, within 45 days of their submission to the Council, excluding Saturdays, Sundays, holidays, and days during which the Council is in recess.

(d) To enforce this subchapter, the Mayor may seek either the civil penalties in this section or the criminal penalties in § 2104 of The Housing Code of the District of Columbia [14 DCMR § 102] or § 6-1406(a) and (b), but the Mayor shall not seek both the civil penalties and the criminal penalties to enforce a related series of violations.

(June 20, 1978, D.C. Law 2-81, § 9a, as added Mar. 13, 1985, D.C. Law 5-139, § 2, 31 DCR 5751; Mar. 21, 1987, D.C. Law 6-216, § 13(e), 34 DCR 1072; May 10, 1989, D.C. Law 7-231, § 19, 36 DCR 492; Mar. 8, 1991, D.C. Law 8-237, § 29, 38 DCR 314.)

Prior Codifications. — 1981 Ed., § 5-537.

Legislative history of Law 5-139. — Law 5-139, the “Smoke Detector Act of 1978 Amendment Act of 1984,” was introduced in Council and assigned Bill No. 5-418, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on September 12, 1984, and October 9, 1984, respectively. Signed by the Mayor on October 25, 1984, it was assigned Act No. 5-197 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-216. — For legislative history of D.C. Law 6-216, see Historical and Statutory Notes following § 6-701.12.

Legislative history of Law 7-231. — For legislative history of D.C. Law 7-231, see His-

torical and Statutory Notes following § 6-703.01.

Legislative history of Law 8-237. — Law 8-237, the “Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 Technical and Clarifying Amendments Act of 1990,” was introduced in Council and assigned Bill No. 8-203, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-320 and transmitted to both Houses of Congress for its review.

References in text. — “Section 2104 of The Housing Code of the District of Columbia,” referred to in subsection (d) of this section, is classified to 14 DCMR § 102.1.

§ 6-751.10. Installation by tenant.

(a) A tenant of a dwelling unit that is not in compliance with this subchapter may purchase, install, and maintain a smoke detector or visual alert system, or arrange for proper installation and maintenance of a smoke detector or visual alert system, and may deduct the reasonable costs from the rent for the dwelling unit. No tenant shall be charged, evicted, or penalized in any fashion for failure to pay the reasonable cost deducted from the rent for the dwelling unit.

(b) In units required to have a smoke detector or visual alert system directly wired to the power supply of the building, and where the landlord fails to install and maintain the smoke detector or visual alert system, the tenant may purchase, install, and maintain battery-operated units at the owner’s expense.

(c) No act or omission by a tenant under this section shall relieve the owner of responsibility to ensure full and continuing compliance with this subchapter,

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nor shall an act or an omission relieve the owner of liability for failure to comply with this subchapter.

(d) Nothing in this section shall be construed to impose a penalty or other liability on a tenant for failure to install or maintain a smoke detector or visual alert system, nor shall this section be construed to mean that a tenant who fails to install or maintain a smoke detector or visual alert system is contributorily negligent.

(June 20, 1978, D.C. Law 2-81, § 9b, as added Mar. 13, 1985, D.C. Law 5-139, § 2, 31 DCR 5751; Mar. 9, 1988, D.C. Law 7-84, § 2(c), 34 DCR 8122.)

Section references. — This section is referred to in §§ 6-751.01 to 6-751.04, 6-751.06, 6-751.08, and 6-751.09.

Prior Codifications. — 1981 Ed., § 5-538.

Emergency legislation. — For temporary (90 day) amendment of section, see § 3, of Fire Alarm Notice and Tenant Fire Safety Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-314, February 22, 2010, 57 DCR 1649).

Legislative history of Law 5-139. — For legislative history of D.C. Law 5-139, see Historical and Statutory Notes following § 6-751.09.

Legislative history of Law 7-84. — For legislative history of D.C. Law 7-84, see Historical and Statutory Notes following § 6-751.02a.

§ 6-751.11. Smoke detector and fire alarm notice.

(a)(1) An owner of an apartment building shall post in conspicuous places in the common areas of the building and provide to each tenant or unit owner, by hand or first-class mail, a written notice that includes:

(A) Instructions on the operation of the apartment building fire alarm;

(B) Whether the apartment building fire alarm is separate from or connected to the smoke detectors in the individual dwelling units;

(C) Whether the apartment building fire alarm is connected to the Fire and Emergency Medical Services Department; and

(D) A warning that in the event of a fire the Fire and Emergency Medical Services Department must be contacted immediately by calling 911.

(2) The notice required by paragraph (1) of this subsection shall be on a form developed by the Mayor and published by the Mayor in English and in the languages required under § 2-1933.

(b) For the purposes of this section, the term:

(1) "Apartment building" means a structure containing 4 or more dwelling units, including a condominium or cooperative but excluding a single-family residence.

(2) "Condominium" shall have the same meaning as provided in § 42-2002(2).

(3) "Cooperative" shall have the same meaning as provided for the term "cooperative housing association" in § 42-3501.03(7).

(June 20, 1978, D.C. Law 2-81, § 9c, as added Mar. 11, 2010, D.C. Law 18-116, § 3, 57 DCR 893.)

Cross references. — Abandoned and Junk Vehicle Division, duties, junk vehicles on private property, see § 50-2402.

Legislative history of Law 18-116. — For Law 18-116, see notes following § 6-701.03a.

Delegation of Authority. — Delegation of

Authority under the Fire Alarm Notice and Tenant Fire Safety Emergency Amendment Act of 2009, see Mayor's Order 2009-101, June 12, 2009 (56 DCR 6844).

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CHAPTER 8. UNSAFE STRUCTURES.

Sec.

6-801. Unsafe structure or excavation — Inspection; owner to remove or secure; Mayor may take immediate action; "Mayor" defined.

6-802. Unsafe structure or excavation — Survey of premises.

6-803. Unsafe structure or excavation — Failure of owner to make safe.

6-804. Dangerous nuisances; notice to abate; failure to abate; life-or-health threatening condition on vacant lot.

Sec.

6-805. Cost of work performed by Mayor assessed against property; violation of §§ 6-801 to 6-803; costs of correcting life-or-health threatening condition.

6-806. Payment of cost assessed against property; sale of property for nonpayment.

6-807. Service of notice.

6-808. Occupation of unsafe structure.

§ 6-801. Unsafe structure or excavation — Inspection; owner to remove or secure; Mayor may take immediate action; "Mayor" defined.

(a) If in the District of Columbia any building or part of a building, staging, or other structure, or anything attached to or connected with any building or other structure or excavation, shall, from any cause, be reported unsafe, the Mayor shall examine such structure or excavation, and if, in his opinion, the same be unsafe, he shall immediately notify the owner, agent, or other persons having an interest in said structure or excavation, to cause the same to be made safe and secure, or that the same be removed, as may be necessary. The person or persons so notified shall be allowed until 12:00 noon of the day following the service of such notice in which to commence the securing or removal of the same; and he or they shall employ sufficient labor to remove or secure the said building or excavation as expeditiously as can be done; provided, however, that in a case where the public safety requires immediate action the Mayor may enter upon the premises, with such workmen and assistants as may be necessary, and cause the said unsafe structure or excavation to be shored up, taken down, or otherwise secured without delay, and a proper fence or boarding to be put up for the protection of passersby.

(a-1) If the unsafe building or structure is an historic landmark or is located in an historic district, as defined in § 6-1102(5), the Mayor shall not order or cause the building or structure, or portion thereof, to be removed or taken down unless the Mayor determines, in consultation with the State Historic Preservation Officer, as defined in § 6-1102(12), that:

(1) There is an extreme and immediate threat to public safety resulting from unsafe structural conditions; and

(2) The unsafe condition cannot be abated by shoring, stabilizing, or securing the building or structure.

(a-2) If the building or structure is an historic landmark or is located within an historic district, as defined in § 6-1102, the Mayor shall not order the removal of the structure unless the Mayor determines that there is an extreme and immediate threat to the safety and welfare of the general public resulting from unsafe structural conditions. If the Mayor makes such determination, the

Mayor shall require the owner to make the building safe and secure in accordance with the provisions of subsection (a) of this section.

(b) The term "Mayor" means the Mayor of the District of Columbia or the agent or agents designated by him to perform any function vested in said Mayor by this chapter.

(Mar. 1, 1899, 30 Stat. 923, ch. 323, § 1; Apr. 5, 1935, 49 Stat. 105, ch. 41; Aug. 22, 1964, 78 Stat. 599, Pub. L. 88-486, §§ 1, 2; Apr. 27, 2001, D.C. Law 13-281, § 102(a), 48 DCR 1888.)

Cross references. — Building regulations, authority of Council and Mayor to promulgate and enforce, see § 1-303.03 and § 1-303.04.

Demolition of historic buildings, see § 6-1111.

Removal of nuisances, see § 47-1205.

Zoning Commission, authority to regulate, see § 6-641.01.

Section references. — This section is referred to in §§ 6-805 and 6-806.

Prior Codifications. — 1981 Ed., § 5-601. 1973 Ed., § 5-501.

Effect of amendments. — D.C. Law 13-281 added subsecs. (c-2) and (c-3).

Legislative history of Law 13-281. — Law 13-281, the "Abatement and Condemnation of Nuisance Properties Omnibus Amendment Act of 2000", was introduced in Council and assigned Bill No. 13-646, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 5, 2000, and December 19, 2000, respectively. Signed by the Mayor on January 22, 2000, it was assigned Act No. 13-78 and transmitted to Both Houses of Congress for its review. D.C. Law 13-281 became effective on April 27,

Editor's notes. — Soil Erosion and Sedimentation Control in Square 6126: Title II, §§ 201-205, of D.C. Law 8-229 gave the Mayor powers to make an immediate determination of nature and cost of remedial actions for sedi-

ment control in Square 6126, power to undertake such actions, power to prohibit activities in Square 6126, power to enter private property to carry out the actions, and power to levy an assessment on the property in Square 6126; however, expenditure of funds for remedial actions or permanent improvements other than in Square 6126 is not authorized, nor is any claim or right of relief for such actions created in any person by title II.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Enforcement authority.
Right to reimbursement.

Enforcement authority.

The Unsafe Structures Act does not grant building owners or any other private parties the right to obtain demolition permits upon a showing that their buildings are unsafe; rather, the Act is purely a grant of enforcement authority to the mayor to secure or demolish unsafe structures, or to compel their owners to do so, under specified conditions as the mayor sees fit. *J.C. & Assocs. v. State Bd. of Appeals & Review*,

778 A.2d 296, 2001 D.C. App. LEXIS 164 (2001).

Right to reimbursement.

The District of Columbia, under statutes pertaining to removal of buildings reported unsafe and to reimbursement of the District for cost of their removal, had a right to reimbursement for cost of razing a building declared so unsafe as to require immediate razing. *D.C. Code 1961, §§ 5-501 to 5-503. Brown v. Tobriner*, 312 F.2d 334, 1962 U.S. App. LEXIS 3703 (C.A.D.C. 1962).

District of Columbia lien for reimbursement for razing a structure declared unsafe was

entitled to priority over notes secured by a prior recorded second deed of trust on the property, where no true mortgagor-mortgagee relationship existed between purported mortgagees and occupants of the building as mortgagors, but arrangement was rather that of landlord and tenant. *Brown v. Tobriner*, 312 F.2d 334, 1962 U.S. App. LEXIS 3703 (C.A.D.C. 1962).

District of Columbia code provision authoriz-

ing District to make structures safe at owners' expense applied to party wall which had been in unsafe condition before its condition was revealed by one owner's razing. D.C. Code 1951, §§ 5-501 to 5-503; 18 U.S.C. § 294(d). *District of Columbia v. Wentworth*, 288 F.2d 421, 1961 U.S. App. LEXIS 5177 (C.A.D.C. 1961).

§ 6-802. Unsafe structure or excavation — Survey of premises.

(a) When the public safety does not, in the judgment of the Mayor, demand immediate action, if the owner, agent, or other party interested in an unsafe structure, except for a deteriorated structure under subchapter II of Chapter 31C of Title 42, or excavation, having been notified, shall refuse or neglect to comply with the requirements of said notice within the time specified, then a careful survey of the premises shall be made by 3 disinterested persons, 1 to be appointed by the Mayor of the District of Columbia, 1 by the owner or other person interested, and the 3rd to be chosen by these 2, and the report of said survey shall be reduced to writing, and a copy served upon the owner or other interested party; and if said owner or other interested party refuses or neglects to appoint a member of said board of survey within the time specified in said notice, then the survey shall be made by the Mayor, and the person chosen by the Mayor, and in case of disagreement they shall choose a 3rd person and the determination of a majority of the 3 so chosen shall be final.

(b) If the building or structure is an historic landmark or is located within an historic district, as defined in § 6-1102(5), the Mayor shall include as a 4th member of the board an architect or historic architect who meets the professional qualifications set forth in 36 C.F.R. § 61.4(f)(1). For the purposes of compliance with this subsection, the Mayor may designate a representative of the State Historic Preservation Officer, as defined in § 6-1102(12).

(Mar. 1, 1899, 30 Stat. 923, ch. 323, § 2; Apr. 5, 1935, 49 Stat. 106, ch. 41; Aug. 22, 1964, 78 Stat. 599, Pub. L. 88-486, § 1; Apr. 27, 2001, D.C. Law 13-281, § 102(b), 48 DCR 1888; Apr. 19, 2002, D.C. Law 14-114, § 102, 49 DCR 1468; Oct. 19, 2002, D.C. Law 14-213, § 12(1), 49 DCR 8140.)

Section references. — This section is referred to in §§ 6-803, 6-805, and 6-1111.

Prior Codifications. — 1981 Ed., § 5-602. 1973 Ed., § 5-502.

Effect of amendments. — D.C. Law 13-281 designated subsec. (a) and added subsec. (b).

D.C. Law 14-114, in subsec. (a), substituted "an unsafe structure, except for a deteriorated structure under subchapter II of Chapter 31C of Title 42, or excavation," for "said unsafe structure or excavation."

D.C. Law 14-213, in subsec. (a), validated a previously made technical correction.

Legislative history of Law 13-281. — For D.C. Law 13-281, see notes following § 6-801.

Legislative history of Law 14-114. — Law 14-114, the "Housing Act of 2002", was introduced in Council and assigned Bill No. 14-183, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on December 4, 2001, and January 8, 2002, respectively. Signed by the Mayor on February 6, 2002, it was assigned Act No. 14-267 and transmitted to both Houses of Congress for its review. D.C. Law 14-114 became effective on April 19, 2002.

Legislative history of Law 14-213. — Law 14-213, the "Technical Amendments Act of 2002", was introduced in Council and assigned Bill No. 14-671, which was referred to the

Committee of the Whole. The Bill was adopted on first and second readings on June 4, 2002, and July 2, 2002, respectively. Signed by the Mayor on July 26, 2002, it was assigned Act No. 14-459 and transmitted to both Houses of Congress for its review. D.C. Law 14-213 became effective on October 19, 2002.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorga-

nization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

In general.

District of Columbia code provision authorizing District to make structures safe at owners' expense applied to party wall which had been in unsafe condition before its condition was revealed by one owner's razing. D.C. Code 1951, §§ 5-501 to 5-503; 18 U.S.C. § 294(d). *District of Columbia v. Wentworth*, 288 F.2d 421, 1961 U.S. App. LEXIS 5177 (C.A.D.C. 1961).

Applicant was not entitled, under the Unsafe

Structures Act, to a demolition permit to raze building that was designated a historic landmark; Building and Land Regulation Administration (BLRA) chose not to exercise its authority under the Act because it found building was not in imminently dangerous condition, and applicant had no legal right to require BLRA to take action under the Act. *J.C. & Assocs. v. State Bd. of Appeals & Review*, 778 A.2d 296, 2001 D.C. App. LEXIS 164 (2001).

§ 6-803. Unsafe structure or excavation — Failure of owner to make safe.

(a) Whenever the report of any such survey shall declare the structure, except for a deteriorated structure under subchapter II of Chapter 31C of Title 42, or excavation to be unsafe, or shall state that structural repairs should be made in order to place the said structure, except for a deteriorated structure under subchapter II of Chapter 31C of Title 42, or excavation in a fit condition for further occupancy or use, and the owner or other interested person shall for 10 days neglect or refuse to cause such structure, except for a deteriorated structure under subchapter II of Chapter 31C of Title 42, or excavation to be taken down or otherwise to be made safe, the Mayor shall proceed to make such structure, except for a deteriorated structure under subchapter II of Chapter 31C of Title 42, or excavation safe or remove the same. After the expiration of the 10 days in which the owner or other interested person is given to make the structure, except for a deteriorated structure under subchapter II of Chapter 31C of Title 42, or excavation safe, or to be taken down or removed, the owner or other interested person, having failed to comply with the provision of the report of the board of survey, shall not enter, or cause to be entered, the premises for the purpose of making the repairs ordered, or razing the building, as the case may be, or in any other way to interfere with the authorized agents of the District of Columbia in making the said structure, except for a deteriorated structure under subchapter II of Chapter 31C of Title 42, or excavation safe, or in removing same, without first having obtained the

written consent of the Mayor of the District of Columbia or his duly authorized representatives.

(b) If the building or structure is an historic landmark or is located within an historic district, as defined in § 6-1102(5), the Mayor shall not require the removal of the structure unless the Mayor determines that there is an extreme and immediate threat to the safety and welfare of the general public resulting from unsafe structural conditions. In making the determination, the Mayor shall give great weight to the recommendations of the survey conducted in compliance with § 6-802.

(Mar. 1, 1899, 30 Stat. 923, ch. 323, § 3; Apr. 5, 1935, 49 Stat. 106, ch. 41; Aug. 22, 1964, 78 Stat. 599, Pub. L. 88-486, §§ 1, 3; Apr. 27, 2001, D.C. Law 13-281, § 102(c), 48 DCR 1888; Apr. 19, 2002, D.C. Law 14-114, § 102, 49 DCR 1468; Oct. 19, 2002, D.C. Law 14-213, § 12(2), 49 DCR 8140.)

Section references. — This section is referred to in §§ 6-805, 6-806, 6-1111, and 47-1205.

Prior Codifications. — 1981 Ed., § 5-603. 1973 Ed., § 5-503.

Effect of amendments. — D.C. Law 13-281 designated subsec. (a) and added subsec. (b).

D.C. Law 14-114, in subsec. (a), substituted “structure, except for a deteriorated structure under subchapter II of Chapter 31C of Title 42, or excavation,” for “structure or excavation.”

D.C. Law 14-213 validated previously made technical corrections.

Legislative history of Law 13-281. — For D.C. Law 13-281, see notes following § 6-801.

Legislative history of Law 14-114. — For Law 14-114, see notes following § 6-802.

Legislative history of Law 14-213. — For Law 14-213, see notes following § 6-802.

Change in Government. — This section originated at a time when local government

powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

Right to reimbursement.

The District of Columbia, under statutes pertaining to removal of buildings reported unsafe and to reimbursement of the District for cost of their removal, had a right to reimbursement for cost of razing a building declared so unsafe as to require immediate razing. D.C. Code 1961, §§ 5-501 to 5-503. *Brown v. Tobriner*, 312 F.2d 334, 1962 U.S. App. LEXIS 3703 (C.A.D.C. 1962).

District of Columbia lien for reimbursement for razing a structure declared unsafe was entitled to priority over notes secured by a prior recorded second deed of trust on the property, where no true mortgagor-mortgagee relation-

ship existed between purported mortgagees and occupants of the building as mortgagors, but arrangement was rather that of landlord and tenant. *Brown v. Tobriner*, 312 F.2d 334, 1962 U.S. App. LEXIS 3703 (C.A.D.C. 1962).

District of Columbia code provision authorizing District to make structures safe at owners' expense applied to party wall which had been in unsafe condition before its condition was revealed by one owner's razing. D.C. Code 1951, §§ 5-501 to 5-503; 18 U.S.C. § 294(d). *District of Columbia v. Wentworth*, 288 F.2d 421, 1961 U.S. App. LEXIS 5177 (C.A.D.C. 1961).

§ 6-804. Dangerous nuisances; notice to abate; failure to abate; life-or-health threatening condition on vacant lot.

(a) The existence on any lot or parcel of land, in the District of Columbia, of any uncovered well, cistern, dangerous hole, excavation, any dead, dangerous or diseased tree, or part thereof, or of any abandoned vehicles of any description or parts thereof, miscellaneous materials or debris of any kind, including substances that have accumulated as the result of repairs to yards or any building operations, insofar as they affect the public health, comfort, safety, and welfare is hereby declared a nuisance dangerous to life and limb, and any person, corporation, partnership, syndicate, or company owning a lot or parcel of land in said District on which such a nuisance exists who shall neglect or refuse to abate the same to the satisfaction of the Mayor of the District of Columbia, after 5 days notice from him to do so, shall, on conviction in the Superior Court of the District of Columbia be punished by a fine of not exceeding \$50 for each and every day said person, corporation, partnership, or syndicate, fails to comply with such notice. In case the owner of, or agent or other party interested in, any lot or parcel of land in the District of Columbia on which there exists an open well, cistern, dangerous hole, or excavation, or any dead, dangerous, or diseased tree or part thereof, or any abandoned or unused vehicles or parts thereof, or miscellaneous accumulation of material or debris which affects public safety, health, comfort, and welfare, shall fail, after notice aforesaid, to abate said nuisance within 1 week after the expiration of such notice, the said Mayor may cause the lot or parcel of land on which the nuisance exists to be secured by fences or otherwise enclosed, and the removal of any abandoned vehicles, or parts thereof, any miscellaneous accumulation of material or debris or any dead or dangerous tree or part thereof, or the removal or spraying of any diseased tree adversely affecting the public safety, health, comfort, and welfare, and double the cost and expense thereof shall be assessed by said Mayor as a tax against the property on which such nuisance exists, and the tax so assessed shall be collected in the manner provided in § 6-806. Within the meaning of this section, a dead tree shall be any tree with respect to which the Mayor of the District of Columbia or his designated agent have determined that no part thereof is living; a dangerous tree is any tree or part thereof, living or dead, which the said Mayor or his designated agent shall find is in such condition and is so located as to constitute a danger to persons or property on public space in the vicinity of such tree; and a diseased tree shall be any tree on private property in such a condition of infection from a major pathogenic disease as to constitute, in the opinion of the said Mayor or his designated agent, a threat to the health of any other tree.

(b) The authority conferred on the Mayor under subsection (a) of this section with respect to the removal of dangerous and diseased trees constituting a nuisance shall be exercised by the Mayor only after every reasonable effort has been made to abate such nuisance other than by the removal of any such tree, or part thereof.

(c) Where the Mayor determines that there exists a life-or-health threatening condition on a vacant lot, the notice required by this chapter shall be

deemed to have been served if the owner or authorized agent is notified by personal service or by registered mail to the last known address and by conspicuous posting on the property. If the owner or owner's address is unknown, notice shall be provided by conspicuous posting on the property. A life-or-health threatening condition means a condition which imminently endangers the health or safety of persons in the area of the vacant lot.

(Mar. 1, 1899, 30 Stat. 923, ch. 323, § 4; Apr. 5, 1935, 49 Stat. 107, ch. 41; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; Aug. 22, 1964, 78 Stat. 599, Pub. L. 88-486, § 4; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); Apr. 23, 1977, D.C. Law 1-128, § 3, 23 DCR 9692; Mar. 10, 1983, D.C. Law 4-205, § 3, 30 DCR 188.)

Cross references. — Motor vehicles, Abandoned and Junk Vehicle Division, see § 50-2402.

Ownership by nonresidents, vacant property, maintenance by resident agent, see § 42-903.

Section references. — This section is referred to in §§ 6-805, 6-806, 6-1111, 10-731, and 42-3131.01.

Prior Codifications. — 1981 Ed., § 5-604. 1973 Ed., § 5-504.

Legislative history of Law 1-128. — Law 1-128, the "Nuisance Elimination Act of 1976," was introduced in Council and assigned Bill No. 1-303, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 23, 1976, and December 7, 1976, respectively. Enacted without signature by the Mayor on January 19, 1977, it was assigned Act No. 1-222 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-205. — Law 4-205, the "Summary Abatement of Life-or-Health Threatening Conditions Act of 1982," was introduced in Council and assigned Bill No. 4-459, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings

on November 16, 1982, and December 14, 1982, respectively. Signed by the Mayor on December 28, 1982, it was assigned Act No. 4-289 and transmitted to both Houses of Congress for its review.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

In general.

Power to abate nuisance.

Trees.

In general.

Need for a mechanism to abate various nuisances not specifically covered by unsafe structures statutes and by other laws, especially those for which the responsible persons were not reachable by court process, was the principal purpose underlying enactment of statute governing power of mayor to correct conditions of real property violative of law. D.C. Code

1981, §§ 5-513, 5-604 to 5-608. *Auger v. D.C. Bd. of Appeals & Review*, 477 A.2d 196, 1984 D.C. App. LEXIS 370 (1984).

Power to abate nuisance.

Where defendant removed automobiles, which either had valid license tags or were virtually undamaged and could not therefore have reasonably have been regarded as abandoned, from parking lot under authorization by property managers, who did not have authority to contract with defendant for removal of such vehicles, defendant had no right to tow away such automobiles and thus was properly found guilty of taking property without right. D.C.

Code §§ 5-504, 22-1211, 40-810. *Fogle v. United States*, 336 A.2d 833, 1975 D.C. App. LEXIS 369 (1975).

Trees.

The District of Columbia's obligation to assure reasonable degree of safety on its streets required that the District be alert to the pres-

ence of and carefully observe at periodic intervals trees that present hazards because of their proximity to roadways or their susceptibility to weakening or both; additionally, the District must be prepared to abate such hazards as its inspections revealed. D.C. Code § 5-504. *Husovsky v. United States*, 590 F.2d 944, 1978 U.S. App. LEXIS 10483 (C.A.D.C. 1978).

§ 6-805. Cost of work performed by Mayor assessed against property; violation of §§ 6-801 to 6-803; costs of correcting life-or-health threatening condition.

(a) The Mayor shall determine the cost and expense of any work performed by him under the authority of §§ 6-801 to 6-804, including the cost of making good damage to adjoining premises (except such as may have resulted from carelessness and willful recklessness in the demolition or removal of any structure) less the amount, if any, received from the sale of old material, and shall assess such costs and expense upon the lot or ground whereon such structure, excavation, or nuisance stands, stood, was dug, was located, or existed, and this amount shall be collected in the manner provided in § 6-806. Any person, corporation, partnership, syndicate, or company subject to the provisions of §§ 6-801 to 6-803 who shall neglect or refuse to perform any act required by such sections shall be punished by a fine not exceeding \$50 for each and every day said person, corporation, partnership, syndicate, or company fails to perform any act required by such sections. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction by any person, corporation, partnership, syndicate, or company subject to the provisions of §§ 6-801 through 6-803 who shall neglect or refuse to perform any act required by these sections, pursuant to Chapter 18 of Title 2. Adjudication of any infraction shall be pursuant to Chapter 18 of Title 2.

(b) The Mayor may assess all reasonable costs, including administrative costs, of correcting a life-or-health threatening condition pursuant to § 6-804(c) and all expenses incident thereto as a tax against the property, may carry this tax on the regular tax rolls, and may collect this tax in the same manner as real estate taxes are collected. Monies in the revolving fund established by § 6-711.01(b)(1) shall be available to cover the costs of correcting life-or-health threatening conditions. If an accounting is made in accordance with, and subject to, § 47-1340(f), any amounts assessed and collected as a tax against real property under this section shall be deposited to the credit of the revolving fund.

(Mar. 1, 1899, 30 Stat. 923, ch. 323, § 5; Aug. 22, 1964, 78 Stat. 600, Pub. L. 88-486, § 5; Mar. 10, 1983, D.C. Law 4-205, § 4, 30 DCR 188; Oct. 5, 1985, D.C. Law 6-42, § 472(a), 32 DCR 4450; June 9, 2001, D.C. Law 13-305, § 508(c), 48 DCR 334.)

Cross references. — Ownership by nonresidents, vacant property, maintenance by resident agent, see § 42-903.

Section references. — This section is referred to in § 6-1111.

Prior Codifications. — 1981 Ed., § 5-605. 1973 Ed., § 5-505.

Effect of amendments. — D.C. Law 13-305 rewrote the last sentence of subsec. (b) which prior thereto read: "Any amounts assessed and collected as a tax against real property pursuant to this section shall be deposited to the credit of the revolving fund."

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 8(c) of the Real Property Tax Clarity and Litter Control Administration Temporary Amendment Act of 2001 (D.C. Law 14-8, June 13, 2001, law notification 48 DCR 5916).

Emergency legislation. — For temporary (90 day) amendment of section, see § 8(c) of Real Property Tax Clarity and Litter Control Administration Emergency Act of 2001 (D.C. Act 14-22, March 16, 2001, 48 DCR 2706).

Legislative history of Law 4-205. — For legislative history of D.C. Law 4-205, see Historical and Statutory Notes following § 6-804.

Legislative history of Law 6-42. — Law 6-42, the "Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985," was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned

Act No. 6-60 and transmitted to both Houses of Congress for its review.

Legislative history of Law 13-305. — Law 13-305, the "Tax Clarity Act of 2000", was introduced in Council and assigned Bill No. 13-586, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on October 3, 2000, and November 8, 2000, respectively. Signed by the Mayor on December 13, 2000, it was assigned Act No. 13-501 and transmitted to Both Houses of Congress for its review. D.C. Law 13-305 became effective on June 9, 2001.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Liens.

Right to reimbursement.

Liens.

District of Columbia lien for reimbursement for razing a structure declared unsafe was entitled to priority over notes secured by a prior recorded second deed of trust on the property, where no true mortgagor-mortgagee relationship existed between purported mortgagees and occupants of the building as mortgagors, but arrangement was rather that of landlord and tenant. *Brown v. Tobriner*, 312 F.2d 334, 1962 U.S. App. LEXIS 3703 (C.A.D.C. 1962).

Right to reimbursement.

The District of Columbia, under statutes per-

taining to removal of buildings reported unsafe and to reimbursement of the District for cost of their removal, had a right to reimbursement for cost of razing a building declared so unsafe as to require immediate razing. D.C. Code 1961, §§ 5-501 to 5-503. *Brown v. Tobriner*, 312 F.2d 334, 1962 U.S. App. LEXIS 3703 (C.A.D.C. 1962).

District of Columbia code provision authorizing District to make structures safe at owners' expense applied to party wall which had been in unsafe condition before its condition was revealed by one owner's razing. D.C. Code 1951, §§ 5-501 to 5-503; 18 U.S.C. § 294(d). *District of Columbia v. Wentworth*, 288 F.2d 421, 1961 U.S. App. LEXIS 5177 (C.A.D.C. 1961).

§ 6-806. Payment of cost assessed against property; sale of property for nonpayment.

(a) Any tax authorized to be levied and collected under § 6-804, may be paid without interest within 60 days from the date such tax was levied. Interest of 20% per annum shall be charged on all unpaid amounts from the expiration of 60 days from the date such tax was levied. Any such tax may be paid in 3 equal installments with interest thereon. If any such tax or part thereof shall remain unpaid after the expiration of 2 years from the date such tax was levied, the property against which said tax was levied may be sold for such tax or unpaid portion thereof with interest and penalties thereon at the next ensuing annual tax sale conducted pursuant to § 47-1301 in the same manner and under the same conditions as property sold for delinquent general real estate taxes, if said tax with interest and penalties thereon shall not have been paid in full prior to said sale.

(b) For taxes authorized to be levied and collected under this chapter in accordance with §§ 6-801 and 6-803, the provisions of § 47-1205(b) and (c) shall apply.

(Mar. 1, 1899, 30 Stat. 923, ch. 323, § 6; Aug. 22, 1964, 78 Stat. 600, Pub. L. 88-486, § 5; Apr. 23, 1977, D.C. Law 1-128, § 4, 23 DCR 9692; Aug. 9, 1986 D.C. Law 6-135, § 14(f), 33 DCR 3771; Apr. 9, 1997, D.C. Law 11-198, § 201, 43 DCR 4569.)

Cross references. — Expiration or termination of lease, removal of structure and restoration of air space, see § 10-1121.09.

Section references. — This section is referred to in §§ 6-804, 6-805, 6-1111, 42-3131.14.

Prior Codifications. — 1981 Ed., § 5-606. 1973 Ed., § 5-506.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 201 of Fiscal Year 1997 Budget Support Temporary Amendment Act of 1996 (D.C. Law 11-226, April 9, 1997, law notification 44 DCR 2584).

Emergency legislation. — For temporary (90-day) amendment of section, see § 201 of the Fiscal Year 1997 Budget Support Emergency Act of 1996 (D.C. Act 11-302, July 25, 1996, 43 DCR 4181); § 201 of the Fiscal Year 1997 Budget Support Emergency Amendment Act of 1996 (D.C. Act 11-429, October 29, 1996, 43 DCR 6151), and § 201 of the Fiscal Year 1997 Budget Support Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-2, February 19, 1997, 44 DCR 1590).

Legislative history of Law 1-128. — For legislative history of D.C. Law 1-128, see Historical and Statutory Notes following § 6-804.

Legislative history of Law 6-135. — Law 6-135, the “Homestead Housing Preservation Act of 1986,” was introduced in Council and assigned Bill No. 6-168, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on May 27, 1986, and June 10, 1986, respectively. Signed by the Mayor on June 13, 1986, it was assigned Act No. 6-173 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-198. — Law 11-198, the “Fiscal Year 1997 Budget Support Act of 1996,” was introduced in Council and assigned Bill No. 11-741, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 19, 1996, and July 3, 1996, respectively. Signed by the Mayor on July 26, 1996, it was assigned Act No. 11-360 and transmitted to both Houses of Congress for its review. D.C. Law 11-198 became effective on April 9, 1997.

Editor's notes. — Application of Law 11-198: Section 1001 of D.C. Law 11-198 provided that titles I, II, III, V, and VI and §§ 405 and 406 of the act shall apply after September 30, 1996.

§ 6-807. Service of notice.

(a) Any notice required by this chapter to be served shall be deemed to have

been served when served by any of the following methods: (1) when forwarded to the last known address of the owner as recorded in the real estate assessment records of the District of Columbia, by registered or certified mail, with return receipt, and such receipt shall constitute prima facie evidence of service upon such owner if such receipt is signed either by the owner or by a person of suitable age and discretion located at such address; provided, that valid service upon the owner shall be deemed effected if such notice shall be refused by the owner and not delivered for that reason; (2) when delivered to the person to be notified; (3) when left at the usual residence or place of business of the person to be notified with a person of suitable age and discretion then resident or employed therein; (4) if no such residence or place of business can be found in the District of Columbia by reasonable search, then if left with any person of suitable age and discretion employed at the office of any agent of the person to be notified, which agent has any authority or duty with reference to the land or tenement to which said notice relates; (5) if any such notice forwarded by registered or certified mail be returned for reasons other than refusal, or if personal service of any such notice, as hereinbefore provided, cannot be effected, then if published on 3 consecutive days in a daily newspaper published in the District of Columbia; or (6) if by reason of an outstanding unrecorded transfer of title the name of the owner in fact cannot be ascertained beyond a reasonable doubt, then if served on the owner of record in a manner hereinbefore provided. Any notice to a corporation shall, for the purposes of this chapter, be deemed to have been served on such corporation if served on the president, secretary, treasurer, general manager, or any principal officer of such corporation in the manner hereinbefore provided for the service of notices on natural persons holding property in their own right, and notices to a foreign corporation shall, for the purposes of this chapter, be deemed to have been served if served personally on any agent of such corporation, or if left with any person of suitable age and discretion residing at the usual residence or employed at the usual place of business of such agent in the District of Columbia.

(b) In case such notice is served by any method other than personal service, a copy of such notice shall also be sent to the owner by ordinary mail.

(Mar. 1, 1899, 30 Stat. 923, ch. 323, § 5; Apr. 5, 1935, 49 Stat. 107, ch. 41; Aug. 22, 1964, 78 Stat. 600, Pub. L. 88-486, § 6.)

Section references. — This section is referred to in § 6-1111.

Prior Codifications. — 1981 Ed., § 5-607. 1973 Ed., § 5-507.

§ 6-808. Occupation of unsafe structure.

Whenever the Mayor finds that any building or part of a building, staging, or other structure, or anything attached to or connected with any building or other structure or excavation shall cause a building to be unsafe for human occupancy, he shall give notice of such fact to the owner or other person having an interest in such building, and to the occupant or occupants thereof. If, within 5 days after such notice has been served upon such owner or other interested person, such building or part thereof has not been made safe for

human occupancy, the Mayor may order the use of such building or part thereof discontinued until it has been made safe; provided, that if in the opinion of the Mayor the unsafe condition of the building or part thereof is such as to be imminently dangerous to the life or limb of any occupant, the Mayor may order the immediate discontinuance of the use of such building or part thereof. Any person occupying, or permitting the occupancy of, such building or part thereof in violation of such order of the Mayor shall be fined not more than \$300 or imprisoned for not more than 30 days. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction by any person occupying, or permitting the occupancy of, a building or part thereof in violation of the order of the Mayor, pursuant to Chapter 18 of Title 2. Adjudication of any infraction shall be pursuant to Chapter 18 of Title 2.

(Mar. 1, 1899, 30 Stat. 923, ch. 323, § 8; Aug. 22, 1964, 78 Stat. 601, Pub. L. 88-486, § 8; Oct. 5, 1985, D.C. Law 6-42, § 472(b), 32 DCR 4450.)

Cross references. — Housing conversion and sale, fund for housing assistance, authorized uses, displaced tenants, see § 42-3403.07.

Section references. — This section is referred to in § 6-1111.

Prior Codifications. — 1981 Ed., § 5-608. 1973 Ed., § 5-508.

Legislative history of Law 6-42. — For legislative history of D.C. Law 6-42, see Historical and Statutory Notes following § 6-805.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of

Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CHAPTER 9. INSANITARY BUILDINGS.

| Sec. | Sec. |
|---|---|
| 6-901. Inspection of buildings authorized. | 6-910. Service of notice. |
| 6-902. Board for the Condemnation of Insanitary Buildings; Condemnation Review Board. | 6-911. Interference with inspection or work. |
| 6-903. Condemnation procedure; occupancy of condemned buildings. | 6-912. Destruction, removal, or concealment of copy of order of condemnation affixed to building. |
| 6-904. Occupancy of condemned building. | 6-913. Review of order of condemnation. |
| 6-905. Owner to repair or demolish condemned building. | 6-914. Appeal from order of condemnation. |
| 6-906. Cancellation of condemnation order; extensions of time. | 6-915. Neglect by tenants or occupants. |
| 6-907. Failure of owner to comply with order; repair or demolition of building; cost assessed against property. | 6-916. Violation of § 6-903, § 6-904, § 6-905, § 6-907, § 6-911, § 6-912, or § 6-915. |
| 6-908. Litigation involving title to property. | 6-917. Appropriations authorized. |
| 6-909. Appointment of guardian for person non compos mentis or for infant. | 6-918. "Mayor" and "owner" defined; agent of owner. |
| | 6-919. Suits and proceedings under prior law; time limits. |

§ 6-901. Inspection of buildings authorized.

(a) The Mayor may examine the habitability and sanitary condition of all buildings in the District of Columbia, to condemn those buildings which are in such insanitary condition as to endanger the health or lives of the occupants thereof or persons living in the vicinity, and to cause all buildings to be habitable and sanitary or to be demolished and removed. The Mayor may authorize and direct the performance of the duties imposed on him by this chapter by such officers, agents, employees, contractors, employees of contractors, and other persons as may be designated, detailed, employed, or appointed by the said Mayor to carry out the purposes of this chapter. The Mayor or his designated agent or agents are authorized to investigate, through personal inquiry and inspection, into the habitability and sanitary condition of a building or part of a building in said District, except such as are under the exclusive jurisdiction of the United States. The Mayor, and all persons acting under his authority and the authority contained in this chapter, may, between the hours of 8:00 a.m. and 5:00 p.m., peaceably enter into and upon any and all lands and buildings in said District for the purpose of inspecting the same. If the unsafe building or structure is an historic landmark or is located in an historic district, as defined in § 6-1102(5), the Mayor shall not order or cause the building or structure, or portion thereof, to be removed or taken down, unless the Mayor determines, in consultation with the State Historic Preservation Officer, as defined in § 6-1102(12), that:

(1) There is an extreme and immediate threat to public safety resulting from unsafe structural conditions; and

(2) The unsafe condition cannot be abated by shoring, stabilizing, or securing the building or structure.

(b) As used in this section, the terms "uninhabitable" or "uninhabitability" mean the condition of being in an unlivable condition due to deterioration and infestation, improper maintenance, decaying structures, insufficient light or ventilation, inadequate plumbing, defective electrical system, or general filthy

conditions that may cause health and safety concerns for the public, or that is a fire hazard or nuisance.

(May 1, 1906, 34 Stat. 157, ch. 2073, § 1; Aug. 28, 1954, 68 Stat. 884, ch. 1032; Apr. 27, 2001, D.C. Law 13-281, § 103(a), 48 DCR 1888.)

Cross references. — Building regulations, authority of Council and Mayor to promulgate and enforce, see § 1-303.03 and § 1-303.04.

Demolition of historic buildings, see § 6-1111.

Zoning Commission, authority to regulate, see § 6-641.01.

Prior Codifications. — 1981 Ed., § 5-701. 1973 Ed., § 5-616.

Effect of amendments. — D.C. Law 13-281 designated subsec. (a), rewrote the first sentence of subsec. (a) which had read: "The Mayor of the District of Columbia is authorized to examine into the sanitary condition of all buildings in said District, to condemn those buildings which are in such insanitary condition as to endanger the health or lives of the occupants thereof or persons living in the vicinity, and to cause all buildings to be put into sanitary condition or to be demolished and removed as may be required by the provisions of this chapter"; in the third sentence of subsec. (a), substituted "into the habitability and sanitary condition of a building" for "into the sanitary condition of any building"; inserted the last sentence of subsec. (a); and added subsec. (b).

Legislative history of Law 13-281. — For D.C. Law 13-281, see notes following § 6-801.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Actions and proceedings.

Federal civil rights.

Actions and proceedings.

Disputed facts concerning whether District of Columbia violated landowner's due process rights by failing to issue new notice of condemnation after its 18-month course of negotiations with him following issuance of its initial notice of condemnation, precluded summary judgment in landowner's civil rights action against District arising when District razed landowner's building. 42 U.S.C. § 1983; U.S.

Const.Amend. 5, 14. *Miller v. District of Columbia*, 587 A.2d 213, 1991 D.C. App. LEXIS 36 (1991).

Federal civil rights.

District of Columbia's condemnation statute did not foreclose § 1983 civil rights action based on alleged wrongful condemnation of landowner's property; statute provided no remedy for alleged procedural due process violation such as lack of notice and further hearing. 42 U.S.C. § 1983; D.C. Code 1981, § 5-703 et seq.; U.S. Const.Amend. 5, 14. *Miller v. District of Columbia*, 587 A.2d 213, 1991 D.C. App. LEXIS 36 (1991).

§ 6-902. Board for the Condemnation of Insanitary Buildings; Condemnation Review Board.

(a) The Mayor is directed to appoint or designate a board to consist of not less than 3 members, to perform the duties and functions required by this chapter as follows:

(1) A Board for the Condemnation of Insanitary Buildings to examine the habitability and sanitary condition of buildings in the District of Columbia, to

determine which such buildings are in such insanitary condition as to endanger the lives or health of the occupants thereof or of persons living in the vicinity, and to issue appropriate orders of condemnation requiring the correction of such condition or conditions or to require the demolition of any building, in accordance with the provisions of this chapter;

(2) Repealed.

(a-1) The Board shall be comprised of 7 members, as follows:

(1) Two members designated by the Department of Consumer and Regulatory Affairs, one of whom shall be the chairperson;

(2) One member designated by the Deputy Mayor for Economic Development;

(3) One member designated by the Office of Property Management;

(4) One member designated by the Department of Public Works;

(5) One member designated by the Department of Housing and Community Development; and

(6) One member designated by the Office of Historic Preservation.

(b) A majority of the members of the Board established by subsection (a) of this section shall constitute a quorum, and a majority vote of the members present shall be required in connection with any act of the Board. No person shall act as a member of either of said Boards the Board who has any property interest, direct or indirect, in his own right or through relatives or kin, in the building the sanitary condition of which is under consideration.

(c) Repealed.

(c-1) The chairperson may direct that the Board shall sit in panels of 3 members, in which 3 members constitute a quorum, when there is a declaration by the chairperson that the business of the Board cannot be met by sitting as a full Board. A decision made by a panel established by this subsection shall have the same force and effect as a decision of the full Board. Decisions regarding membership on the panels and designation of panel activities shall be made by the chairperson.

(d) The several provisions of §§ 5-1001, 5-1002, and 5-1003 shall be applicable to and enforceable in any proceeding conducted under the authority of this chapter. Each person acting as a member of the Board required to be established by this section, and each alternate member when acting in the stead of the member for whom he is alternate, is hereby authorized to administer oaths to witnesses summoned in any proceeding conducted by the Board. Any fee which may be paid any witness summoned to appear before the Board shall be assessed as a tax against the property the condition of which is under investigation, such tax to be collected in the manner provided in § 6-907; provided, that whenever any order of condemnation is vacated or set aside, by the Superior Court of the District of Columbia, the witness fee authorized by this subsection to be assessed against the property affected by such order of condemnation shall not be so assessed, but shall be paid by the government of the District of Columbia.

(May 1, 1906, 34 Stat. 157, ch. 2073, § 2; Aug. 28, 1954, 68 Stat. 884, ch. 1032; Nov. 7, 1965, 79 Stat. 1216, Pub. L. 89-326, § 1; Mar. 3, 1979, D.C. Law 2-139,

§ 3205(qq), 25 DCR 5740; Aug. 7, 1980, D.C. Law 3-81, § 2(gg), 27 DCR 2632; Apr. 27, 2001, D.C. Law 13-281, § 103(b), 48 DCR 1888; Dec. 7, 2004, D.C. Law 15-205, § 2072(a), 51 DCR 8441.)

Cross references. — Building regulations, authority of Council and Mayor to promulgate and enforce, see §§ 1-303.03 and 1-303.04.

Inspections, Assistant Inspector of Buildings, powers and duties, see § 2-138.

Merit system, effective dates, see § 1-636.02.

Section references. — This section is referred to in § 6-1111.

Prior Codifications. — 1981 Ed., § 5-702.

1973 Ed., § 5-617.

Effect of amendments. — D.C. Law 13-281, in subsec. (a), in the lead-in text, substituted “a board” for “two separate boards, each”; in par. (1) of subsec. (a), substituted “examine the habitability and sanitary condition of buildings in the District of Columbia” for “examine into the sanitary condition of buildings in the District of Columbia”; repealed par. (2) of subsec. (a) which had read:

“(2) A Condemnation Review Board, no member of which shall act as a member of the Board for the Condemnation of Insanitary Buildings, to review, upon written request, any order of condemnation issued by the Board for the Condemnation of Insanitary Buildings, and to affirm, modify, or vacate such order of condemnation if the Condemnation Review Board shall find that the sanitary condition of the building under examination requires the affirmation, modification, or vacation of such order of condemnation. The Condemnation Review Board shall consist of at least 3 members and an alternate member for each of said members, at least two-thirds of such members and at least two-thirds of such alternate members to be residents of the District of Columbia and to be selected from among the persons designated under subsection (c) of this section, and not more than one-third of such members and one-third of such alternate members may be employed by the government of the District of Columbia.”; in subsec. (b), substituted “the Board” for “each of the boards” and “either of the said Boards”; repealed subsec. (c) which had read: “(c) The Mayor shall designate a number of real property owning residents of the District of Columbia, not employed by the government of the District of Columbia or the government of the United States, each of whom from time to time shall be designated by the Mayor to act as a member or an alternate member of the Condemnation Review Board established under the authority of subsection (a) of this section.”; and, in subsec. (d), substituted “the Board” for “either of the Boards” or “either of the said Boards”. D.C. Law 15-205 added subsecs. (a-1) and (c-1).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2072(a) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 2072(a) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 2-139. — Law 2-139, the “District of Columbia Government Comprehensive Merit Personnel Act of 1978,” was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978, and October 31, 1978, respectively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-81. — Law 3-81, the “District of Columbia Government Comprehensive Merit Personnel Act Amendments of 1980,” was introduced in Council and assigned Bill No. 3-236, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 22, 1980, and May 20, 1980, respectively. Signed by the Mayor on June 4, 1980, it was assigned Act No. 3-195 and transmitted to both Houses of Congress for its review.

Legislative history of Law 13-281. — For D.C. Law 13-281, see notes following § 6-801.

Legislative history of Law 15-205. — For Law 15-205, see notes following § 6-623.01.

Short title. — Short title of subtitle F of title II of Law 15-205: Section 2071 of D.C. Law 15-205 provided that subtitle F of title II of the act may be cited as the Board of Condemnation and Insanitary Buildings Amendment Act of 2004.

Editor’s notes. — Order establishing Board for the Condemnation of Insanitary Buildings: See Organization Order No. 102, 54-2034, dated September 27, 1954, as amended March 18, 1958, June 10, 1958, May 26, 1960, July 5, 1960, March 23, 1970, May 25, 1970, July 27, 1971, September 20, 1983, and by Reorganization Plan No. 3 of 1975.

Order establishing Condemnation Review Board: See Organization Order No. 103, dated September 27, 1954, as amended April 23, 1957, and July 14, 1960.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commis-

sioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat.

818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

In general.

Mayor's agent has no authority under the Preservation Act to order demolition of historic landmark in interest of health, safety, and welfare of community, and agent acting under the Preservation Act could not legally invoke powers derived from the Insanitary Buildings Act. D.C. Code 1981, §§ 5-702(a), 5-1011(b). *District of Columbia Preservation League v. Department of Consumer & Regulatory Affairs*, 646 A.2d 984, 1994 D.C. App. LEXIS 138 (1994), amended by 1994 D.C. App. LEXIS 166 (D.C. Sept. 20, 1994).

After it was determined that mayor's agent exceeded his authority under Preservation Act

in granting application to demolish historic landmark, mayor's agent was required on remand to either refer case to corporation counsel to initiate proceedings to require landowner to restore building to its former appearance, or to refer case to condemnation board for the condemnation of insanitary buildings so that it could begin condemnation proceedings under the Insanitary Buildings Act. D.C. Code 1981, §§ 5-705, 5-1010(b). *District of Columbia Preservation League v. Department of Consumer & Regulatory Affairs*, 646 A.2d 984, 1994 D.C. App. LEXIS 138 (1994), amended by 1994 D.C. App. LEXIS 166 (D.C. Sept. 20, 1994).

§ 6-903. Condemnation procedure; occupancy of condemned buildings.

Whenever the Board for the Condemnation of Insanitary Buildings shall find that any building or part of building is in such habitable or sanitary condition as to endanger the health or lives of the occupants thereof or persons living in the vicinity, the owner of such building shall be served with a notice requiring him to show cause, within a time to be specified in such notice, why such building or part of building should not be condemned. The time to be fixed in such notice shall not be less than 5 days, exclusive of Sundays and legal holidays, after the date of service of said notice, unless the Board shall find that the uninhabitable or insanitary condition of such building or part of building is such as to cause immediate danger to the health or lives of the occupants thereof or of persons living in the vicinity, in which case a lesser time may be specified in said notice. If within the time to show cause fixed by the Board, the owner shall fail to show cause sufficient in the opinion of the Board to prevent the condemnation of such building or part of building, the Board shall issue an order condemning such building or part of building and ordering the same to be put into habitable or sanitary condition or to be demolished and removed within a time to be specified in said order of condemnation, and shall cause a copy of such order to be served on the owner and a copy to be affixed to the building or part of building condemned. The Board shall give the owner reasonable time within which to put the building in habitable or sanitary condition, but such time shall be not less 30 days after the date of service of said order on said owner, unless the Board shall find that the condition of said

premises is such as to cause immediate danger to the health or lives of the occupants thereof or of persons living in the vicinity, in which event the Board may fix a lesser time. From and after 15 days, exclusive of Sundays or legal holidays, or within such additional time as may be fixed by the Board, after a copy of any order of condemnation has been affixed to any condemned building or part of building, no person shall occupy such building or part of building.

(May 1, 1906, 34 Stat. 157, ch. 2073, § 3; Aug. 28, 1954, 68 Stat. 885, ch. 1032; Apr. 27, 2001, D.C. Law 13-281, § 103(c), 48 DCR 1888; Oct. 19, 2002, D.C. Law 14-213, § 13, 49 DCR 8140; Dec. 7, 2004, D.C. Law 15-205, § 2072(b), 51 DCR 8441.)

Cross references. — Penalties for violation, see § 6-916.

Section references. — This section is referred to in §§ 6-919, 6-1111, and 8-411.

Prior Codifications. — 1981 Ed., § 5-703. 1973 Ed., § 5-618.

Effect of amendments. — D.C. Law 13-281 substituted “5 days” for “ten days”, substituted “60 days” for “not less than six months”, substituted “habitable or sanitary condition” for “sanitary condition”, and substituted “uninhabitable or insanitary condition” for “insanitary condition”.

D.C. Law 14-213 validated a previously made technical correction.

D.C. Law 15-205 substituted “30 days” for “60 days”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2072(b) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 2072(b) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 13-281. — For D.C. Law 13-281, see notes following § 6-801.

Legislative history of Law 14-213. — For Law 14-213, see notes following § 6-802.

Legislative history of Law 15-205. — For Law 15-205, see notes following § 6-623.01.

CASE NOTES

ANALYSIS

Actions and proceedings.
Administrative procedure.
Federal civil and constitutional rights.
Validity.

Actions and proceedings.

A municipality in the exercise of its police power may, without compensation, destroy a building or structure that is a menace to the public safety or health. D.C. Code §§ 5-618, 5-620. *Miles v. District of Columbia*, 510 F.2d 188, 1975 U.S. App. LEXIS 15548 (C.A.D.C. 1975).

When faced with conditions extremely dangerous to health or safety, municipality may act summarily without notice. D.C. Code §§ 5-618, 5-620. *Miles v. District of Columbia*, 510 F.2d 188, 1975 U.S. App. LEXIS 15548 (C.A.D.C. 1975).

Where complaint charged that at time of condemnation by local board for condemnation of unsanitary buildings and thereafter, plaintiff's buildings were not unsanitary, and that board, in condemning them, acted under improper motive and not in effort to enforce the statute, complaint sufficiently charged that

statute was being unconstitutionally applied to plaintiff, but error in pretrial order treating complaint as though it were bad on demurrer was not prejudicial, in view of fact that trial court's decision of factual issue against plaintiff was supported by substantial evidence. D.C. Code 1940, § 5-601 et seq. *Keys v. Madsen*, 179 F.2d 40, 1949 U.S. App. LEXIS 2613 (C.A.D.C. 1949).

Where contention that statute delegating power to local board for condemnation of insanitary buildings to condemn buildings so insanitary as to endanger lives of their occupants or of persons living in the vicinity was unconstitutional on its face because Congress failed to establish standards for guidance of board was not urged in trial court, it could not be raised for first time on appeal. D.C. Code 1940, § 5-601 et seq. *Keys v. Madsen*, 179 F.2d 40, 1949 U.S. App. LEXIS 2613 (C.A.D.C. 1949).

Disputed facts concerning whether District of Columbia violated landowner's due process rights by failing to issue new notice of condemnation after its 18-month course of negotiations with him following issuance of its initial notice of condemnation, precluded summary judgment in landowner's civil rights action against

District arising when District razed landowner's building. 42 U.S.C. § 1983; U.S. Const.Amends. 5, 14. *Miller v. District of Columbia*, 587 A.2d 213, 1991 D.C. App. LEXIS 36 (1991).

Where owners of premises failed to exercise their right to appeal condemnation order either to Condemnation Review Board or to superior court, question whether property was in fact in an insanitary condition when condemned was precluded and could not serve to confer jurisdiction on court in action wherein owners sought a temporary restraining order against demolition of property. D.C. Code §§ 5-628, 5-629. *Urciolo v. Washington*, 305 A.2d 252, 1973 D.C. App. LEXIS 298 (1973).

Administrative procedure.

Local board for condemnation of insanitary buildings, acting in quasi judicial capacity when conducting a hearing to determine whether plaintiff's houses should be condemned, did not fail to provide a procedure commensurate with requirements of due process. D.C. Code 1940, § 5-601 et seq. *Keys v. Madsen*, 179 F.2d 40, 1949 U.S. App. LEXIS 2613 (C.A.D.C. 1949).

Record failed to establish truth of claim that owners of condemned premises were denied a fair hearing before Condemnation Review Board on motion to stay demolition of property. D.C. Code § 5-618. *Urciolo v. Washington*, 305 A.2d 252, 1973 D.C. App. LEXIS 298 (1973).

Federal civil and constitutional rights.

Although owner was accorded all due process rights prior to 1963 order for condemnation of buildings for alleged insanitary conditions, where the condemnation order was followed by a six-year period during which owner attempted to restore the buildings, due process required that board for condemnation of insanitary buildings convey to owner notice of its 1969 decision to finally have the buildings destroyed. D.C. Code §§ 5-622, 5-629. *Miles v. District of Columbia*, 510 F.2d 188, 1975 U.S. App. LEXIS 15548 (C.A.D.C. 1975).

Publication in newspaper of notice as to proposed demolition of certain property did not meet due process requirements where the publication only identified the property by address and lot number and ran in a group notice which included other properties. D.C. Code §§ 5-618, 5-620. *Miles v. District of Columbia*, 510 F.2d

188, 1975 U.S. App. LEXIS 15548 (C.A.D.C. 1975).

Notice of proposed demolition of insanitary buildings, sent to law partner of owner's deceased attorney, did not satisfy due process where the recipient of the notice responded that he was not an agent for receipt of notice and owner did not consider the recipient to be her attorney. D.C. Code §§ 5-618, 5-620. *Miles v. District of Columbia*, 510 F.2d 188, 1975 U.S. App. LEXIS 15548 (C.A.D.C. 1975).

Where trial court's finding that condition of plaintiff's houses justified local board for condemnation of insanitary buildings in exercising its statutory authority to condemn plaintiff's buildings was supported by evidence, order of condemnation did not deprive plaintiff of her property without due process of law. D.C. Code 1940, § 5-601 et seq. *Keys v. Madsen*, 179 F.2d 40, 1949 U.S. App. LEXIS 2613 (C.A.D.C. 1949).

District of Columbia's condemnation statute did not foreclose § 1983 civil rights action based on alleged wrongful condemnation of landowner's property; statute provided no remedy for alleged procedural due process violation such as lack of notice and further hearing. 42 U.S.C. § 1983; D.C. Code 1981, § 5-703 et seq.; U.S. Const.Amends. 5, 14. *Miller v. District of Columbia*, 587 A.2d 213, 1991 D.C. App. LEXIS 36 (1991).

Demolition of property pursuant to an order of Board for Condemnation of Insanitary Buildings following a determination that property should be condemned because of its insanitary condition was only incidental to a legitimate exercise of governmental power and not a direct appropriation which would bring Fifth Amendment considerations into play. D.C. Code §§ 5-618, 5-628; U.S. Const. Amend. 5. *Urciolo v. Washington*, 305 A.2d 252, 1973 D.C. App. LEXIS 298 (1973).

Validity.

The statute delegating to local board for condemnation of insanitary buildings the power to condemn buildings so insanitary as to endanger lives of their occupants or of persons living in the vicinity is not invalid as violative of the Fifth Amendment on the ground that Congress, in delegating power to the board, failed to establish standards for guidance of the board. D.C. Code 1940, § 5-601 et seq. *Keys v. Madsen*, 179 F.2d 40, 1949 U.S. App. LEXIS 2613 (C.A.D.C. 1949).

§ 6-904. Occupancy of condemned building.

No person having authority to prevent shall permit any building or part of building condemned to be occupied, except as specially authorized by the Board for the Condemnation of Insanitary Buildings under the authority contained in this chapter, after 15 days, exclusive of Sundays and legal holidays, or within

such additional time as may be fixed by the Board, from and after the date of service of a copy of the order of condemnation on the owner of such building; or, if a copy of such order of condemnation has been affixed to the condemned building or part of building at a date subsequent to the date of service of the notice on the owner, after 15 days, exclusive of Sundays and legal holidays, or within such additional time as may be fixed by the Board, from the date on which said copy of such order of condemnation was so affixed.

(May 1, 1906, 34 Stat. 158, ch. 2073, § 4; Aug. 28, 1954, 68 Stat. 886, ch. 1032.)

Section references. — This section is referred to in §§ 6-906, 6-916, and 6-1111.

Prior Codifications. — 1981 Ed., § 5-704. 1973 Ed., § 5-619.

§ 6-905. Owner to repair or demolish condemned building.

The owner of any building or part of building condemned under the provisions of this chapter shall, within the time specified by the Board for the Condemnation of Insanitary Buildings in the order of condemnation, or any extension of time which may be granted by the Board:

(1) make such changes or repairs as will remedy the conditions which led to the condemnation of such building or part of building; or

(2) cause such building or part of building to be demolished and removed; provided, that any owner repairing a building or part of building in accordance with the provisions of this chapter shall be required to make only those repairs which are reasonably related to a correction of the uninhabitable or insanitary condition or conditions found by said Board to exist in or about said building, and nothing in this chapter shall be construed as authorizing the Board to require any repair not reasonably related to the correction of any uninhabitable or insanitary condition in or about such building, but the Board may require the building to be brought into substantial conformity with the Building Code approved pursuant to the Construction Codes Approval and Amendments Act of 1986. Whenever any building is repaired or demolished in accordance with the requirements of this section, such repair or demolition shall be performed in such manner and under the authority of such permit as may be required by any applicable law or regulation.

(May 1, 1906, 34 Stat. 158, ch. 2073, § 5; Aug. 28, 1954, 68 Stat. 886, ch. 1032; Mar. 21, 1987, D.C. Law 6-216, § 13(f), 34 DCR 1072; Apr. 27, 2001, D.C. Law 13-281, § 103(d), 48 DCR 1888.)

Section references. — This section is referred to in §§ 6-916 and 6-1111.

Prior Codifications. — 1981 Ed., § 5-705. 1973 Ed., § 5-620.

Effect of amendments. — D.C. Law 13-281 substituted “uninhabitable or insanitary condition” for “insanitary condition” in two places, and substituted “but the Board may require the building to be brought into substantial conformity” for “or to require such building to be brought into substantial conformity”.

Legislative history of Law 6-216. — Law 6-216, the “Construction Codes Approval and Amendments Act of 1986,” was introduced in Council and assigned Bill No. 6-500, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 18, 1986, and December 16, 1986, respectively. Signed by the Mayor on February 2, 1987, it was assigned Act No. 6-279 and transmitted to both Houses of Congress for its review.

Legislative history of Law 13-281. — For D.C. Law 13-281, see notes following § 6-801.

References in text. — The “Construction

Codes Approval and Amendments Act of 1986,” referred to in par. (2), is D.C. Law 6-216.

CASE NOTES

ANALYSIS

Actions and proceedings.

Federal civil and constitutional rights.

In general.

Actions and proceedings.

Where owners of premises failed to exercise their right to appeal condemnation order either to Condemnation Review Board or to superior court, question whether property was in fact in an insanitary condition when condemned was precluded and could not serve to confer jurisdiction on court in action wherein owners sought a temporary restraining order against demolition of property. D.C. Code §§ 5-628, 5-629. *Urciolo v. Washington*, 305 A.2d 252, 1973 D.C. App. LEXIS 298 (1973).

Federal civil and constitutional rights.

Exhaustion of District of Columbia administrative remedies is not a prerequisite to bringing civil rights action pursuant to § 1983 in local courts of the District. 42 U.S.C. § 1983. *Miller v. District of Columbia*, 587 A.2d 213, 1991 D.C. App. LEXIS 36 (1991).

Demolition of property pursuant to an order of Board for Condemnation of Insanitary Buildings following a determination that property should be condemned because of its insanitary condition was only incidental to a legitimate exercise of governmental power and not a direct appropriation which would bring Fifth Amendment considerations into play. D.C. Code §§ 5-

618, 5-628; U.S. Const. Amend. 5. *Urciolo v. Washington*, 305 A.2d 252, 1973 D.C. App. LEXIS 298 (1973).

In general.

After it was determined that mayor's agent exceeded his authority under Preservation Act in granting application to demolish historic landmark, mayor's agent was required on remand to either refer case to corporation counsel to initiate proceedings to require landowner to restore building to its former appearance, or to refer case to condemnation board for the condemnation of insanitary buildings so that it could begin condemnation proceedings under the Insanitary Buildings Act. D.C. Code 1981, §§ 5-705, 5-1010(b). *District of Columbia Preservation League v. Department of Consumer & Regulatory Affairs*, 646 A.2d 984, 1994 D.C. App. LEXIS 138 (1994), amended by 1994 D.C. App. LEXIS 166 (D.C. Sept. 20, 1994).

Mayor's agent has no authority under the Preservation Act to order demolition of historic landmark in interest of health, safety, and welfare of community, and agent acting under the Preservation Act could not legally invoke powers derived from the Insanitary Buildings Act. D.C. Code 1981, §§ 5-702(a), 5-1011(b). *District of Columbia Preservation League v. Department of Consumer & Regulatory Affairs*, 646 A.2d 984, 1994 D.C. App. LEXIS 138 (1994), amended by 1994 D.C. App. LEXIS 166 (D.C. Sept. 20, 1994).

§ 6-906. Cancellation of condemnation order; extensions of time.

If the owner of any building or part of building condemned under the provisions of this chapter shall make such changes or repairs as will remedy in a manner satisfactory to the Board for the Condemnation of Insanitary Buildings the conditions which led to the condemnation of such building or part of building, the order of condemnation shall be canceled and the building may again be occupied. If the owner cannot make such changes or repairs within the period within which the owner may lawfully permit such building or part of building to be occupied under § 6-904, but proceeds with such changes or repairs with reasonable diligence during such period, said Board may, by special order, extend from time to time the period within which the occupants of said building or part of building may remain therein, and within which the owner of such building may permit the said occupants so to remain.

(May 1, 1906, 34 Stat. 158, ch. 2073, § 6; Aug. 28, 1954, 68 Stat. 886, ch. 1032.)

Section references. — This section is referred to in § 6-1111.

Prior Codifications. — 1981 Ed., § 5-706. 1973 Ed., § 5-621.

§ 6-907. Failure of owner to comply with order; repair or demolition of building; cost assessed against property.

(a) If the owner of any building or part of building condemned under the provisions of this chapter shall fail to remedy in a manner satisfactory to the Board for the Condemnation of Insanitary Buildings the condition or conditions which led to the condemnation thereof, by failing to cause such building or part of building to be put into habitable and sanitary condition or to be demolished and removed within the time specified by said Board in the order of condemnation or any extension thereof, he shall be deemed guilty of a misdemeanor and be liable to the penalties provided by § 6-916, and such building or part of building may be put into habitable and sanitary condition or be demolished and removed under the direction of said Board, and the cost of such repairs or such demolition and removal, including the cost of making good damage to adjoining premises (except such as may have resulted from carelessness or willful recklessness in the demolition or removal of such building), and the cost of publication, if any, herein provided for, less the amount, if any, received from the sale of the old material, shall be assessed by the Mayor of the District of Columbia as a tax against the premises on which such building or part of building was situated, such tax to be collected as provided in this section; provided, that the pendency of any review or appeal provided for by §§ 6-913 and 6-914 shall stay the operation of any order issued by said Board, unless said Board shall find that the condition of said premises is such as to cause immediate danger to the health or lives of the occupants thereof or of persons living in the vicinity; provided further, that the taxes authorized to be levied and collected under this chapter may be paid without interest within 60 days from the date such tax was levied. Interest of one-half of one per centum for each month or part thereof shall be charged on all unpaid amounts from the expiration of 60 days from the date such tax was levied. Any such tax may be paid in 3 equal installments with interest thereon. If any such tax or part thereof shall remain unpaid after the expiration of 2 years from the date such tax was levied, the property against which said tax was levied may be sold for such tax or unpaid portion thereof with interest and penalties thereon at the next ensuing annual tax sale in the same manner and under the same conditions as property sold for delinquent general real estate taxes, if said tax with interest and penalties thereon shall not have been paid in full prior to said sale.

(b) Any tax levied pursuant to this chapter as amended by the Act approved August 28, 1954, which was levied after the effective date of such Act of August 28, 1954, and prior to November 7, 1965, shall, for the purpose of computing interest thereon, be deemed to have been levied as of November 7, 1965.

(May 1, 1906, 34 Stat. 158, ch. 2073, § 7; Aug. 28, 1954, 68 Stat. 886, ch. 1032; Nov. 7, 1965, 79 Stat. 1216, Pub. L. 89-326, § 2; Apr. 27, 2001, D.C. Law 13-281, § 103(e), 48 DCR 1888.)

Section references. — This section is referred to in §§ 6-902, 6-916, and 6-1111.

Prior Codifications. — 1981 Ed., § 5-707. 1973 Ed., § 5-622.

Effect of amendments. — D.C. Law 13-281 substituted “uninhabitable or insanitary condition” for “insanitary condition” throughout the section.

Legislative history of Law 13-281. — For D.C. Law 13-281, see notes following § 6-801.

References in text. — Act of August 28, 1954, referred to twice in subsection (b) of this section, amended this chapter.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of

Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Actions and proceedings.

Civil and constitutional rights.

Actions and proceedings.

Disputed facts concerning whether District of Columbia violated landowner's due process rights by failing to issue new notice of condemnation after its 18-month course of negotiations with him following issuance of its initial notice of condemnation, precluded summary judgment in landowner's civil rights action against District arising when District razed landowner's building. 42 U.S.C. § 1983; U.S. Const. Amends. 5, 14. *Miller v. District of Columbia*, 587 A.2d 213, 1991 D.C. App. LEXIS 36 (1991).

Civil and constitutional rights.

District of Columbia's condemnation statute

did not foreclose § 1983 civil rights action based on alleged wrongful condemnation of landowner's property; statute provided no remedy for alleged procedural due process violation such as lack of notice and further hearing. 42 U.S.C. § 1983; D.C. Code 1981, § 5-703 et seq.; U.S. Const. Amends. 5, 14. *Miller v. District of Columbia*, 587 A.2d 213, 1991 D.C. App. LEXIS 36 (1991).

Demolition of property pursuant to an order of Board for Condemnation of Insanitary Buildings following a determination that property should be condemned because of its insanitary condition was only incidental to a legitimate exercise of governmental power and not a direct appropriation which would bring Fifth Amendment considerations into play. D.C. Code §§ 5-618, 5-628; U.S. Const. Amend. 5. *Urciolo v. Washington*, 305 A.2d 252, 1973 D.C. App. LEXIS 298 (1973).

§ 6-908. Litigation involving title to property.

Whenever the Board for the Condemnation of Insanitary Buildings is in doubt as to the ownership of any building or part of a building, the condemnation of which is contemplated, because the title thereto is in litigation, said Board may notify all parties to the suit and may report the circumstances to the Mayor of the District of Columbia, who may bring such circumstances to the attention of the court in which such litigation is pending for the purpose of securing such order or decree as will enable said Board to continue such condemnation proceedings, and such court is hereby authorized to make such decrees and orders in such pending suit as may be necessary for that purpose.

(May 1, 1906, 34 Stat. 158, ch. 2073, § 8; Aug. 28, 1954, 68 Stat. 887, ch. 1032.)

Section references. — This section is referred to in § 6-1111.

Prior Codifications. — 1981 Ed., § 5-708. 1973 Ed., § 5-623.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and

Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 6-909. Appointment of guardian for person non compos mentis or for infant.

Whenever the title to any building or part of building is vested in a person non compos mentis, or a minor child or minor children without legal guardian, the Board for the Condemnation of Insanitary Buildings shall report that fact to the Mayor of the District of Columbia, who shall take due legal steps to secure the appointment of a guardian or guardians for such person non compos mentis, or minor child or children aforesaid, for the purpose of the condemnation proceedings authorized by this chapter, and any judge of the court having probate jurisdiction is hereby authorized to appoint a guardian or guardians for such purpose.

(May 1, 1906, 34 Stat. 159, ch. 2073, § 9; Aug. 28, 1954, 68 Stat. 887, ch. 1032; July 29, 1970, 84 Stat. 577, Pub. L. 91-358, title I, § 158(e).)

Section references. — This section is referred to in § 6-1111.

Prior Codifications. — 1981 Ed., § 5-709. 1973 Ed., § 5-624.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 6-910. Service of notice.

(a) Any notice required by this chapter to be served shall be deemed served when served by any of the following methods: (1) when forwarded to the last known address of the owner as recorded in the real estate assessment records of the District of Columbia by registered or certified mail, with return receipt, and such receipt shall constitute prima facie evidence of service upon such owner if such receipt is signed either by the owner or by a person of suitable age and discretion located at such address; provided, that valid service upon the owner shall be deemed effected if such notice shall be refused by the owner and not delivered for that reason; (2) when delivered to the person to be

notified; (3) when left at the usual residence or place of business of the person to be notified with a person of suitable age and discretion then resident or employed therein; (4) if no such residence or place of business can be found in the District of Columbia by reasonable search, then if left with any person of suitable age and discretion employed at the office of any agent of the person to be notified, which agent has any authority or duty with reference to the land or tenement to which said notice relates; (5) if any such notice forwarded by registered or certified mail be returned for reasons other than refusal, or if personal service of any such notice, as hereinbefore provided, cannot be effected, then if published on 3 consecutive days in a daily newspaper published in the District of Columbia; or (6) if by reason of an outstanding unrecorded transfer of title the name of the owner in fact cannot be ascertained beyond a reasonable doubt, then if served on the owner of record in a manner hereinbefore provided. Any notice to a corporation shall, for the purposes of this chapter, be deemed to have been served on such corporation if served on the president, secretary, treasurer, general manager, or any principal officer of such corporation in the manner hereinbefore provided for the service of notices on natural persons holding property in their own right; and notices to a foreign corporation shall, for the purposes of this chapter, be deemed to have been served if served personally on any agent of such corporation, or if left with any person of suitable age and discretion residing at the usual residence or employed at the usual place of business of such agent in the District of Columbia.

(b) In case such notice is served by any method other than personal service, notice shall also be sent to the owner by ordinary mail.

(c)(1) For purposes of receiving notice required by this chapter, a person who is a nonresident owner of vacant property in the District of Columbia shall appoint and continuously maintain a registered agent for the service of process. The appointment shall be made by filing a statement with the Mayor. The registered agent shall be an individual who is a resident of the District of Columbia or an organization incorporated in the District of Columbia. If the nonresident owner changes the registered agent or if the name and address or any other information about the registered agent changes after the statement is filed with the Mayor, the nonresident owner shall file a statement notifying the Mayor of the change. A nonresident owner of vacant property in the District of Columbia who violates this section shall be subject to a penalty of \$300.

(2) The Mayor shall serve as the registered agent for a nonresident owner of vacant property if a registered agent is not appointed by the nonresident owner or if the individual or organization named as registered agent ceases to serve in that capacity or cannot be located after reasonable diligence.

(May 1, 1906, 34 Stat. 159, ch. 2073, § 10; Aug. 28, 1954, 68 Stat. 887, ch. 1032; Nov. 7, 1965, 79 Stat. 1216, Pub. L. 89-326, § 3; Dec. 7, 2004, D.C. Law 15-205, § 2072(c), 51 DCR 8441.)

Section references. — This section is referred to in § 6-1111.

Prior Codifications. — 1981 Ed., § 5-710. 1973 Ed., § 5-625.

Effect of amendments. — D.C. Law 15-205 added subsec. (c).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2072(c) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 2072(c) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 15-205. — For Law 15-205, see notes following § 6-623.01.

CASE NOTES

Sufficiency of service.

Municipality, before destroying a building that is a menace to the public safety or health, must give the owner sufficient notice, a hearing and ample opportunity to demolish the building himself or to do what suffices to make it safe or healthy. D.C. Code §§ 5-618, 5-620. *Miles v. District of Columbia*, 510 F.2d 188, 1975 U.S. App. LEXIS 15548 (1975).

Although owner was accorded all due process rights prior to 1963 order for condemnation of buildings for alleged insanitary conditions, where the condemnation order was followed by a six-year period during which owner attempted to restore the buildings, due process required that board for condemnation of insanitary buildings convey to owner notice of its 1969 decision to finally have the buildings destroyed. D.C. Code §§ 5-622, 5-629. *Miles v. District of Columbia*, 510 F.2d 188, 1975 U.S. App. LEXIS 15548 (1975).

Publication in newspaper of notice as to proposed demolition of certain property did not meet due process requirements where the publication only identified the property by address

and lot number and ran in a group notice which included other properties. D.C. Code §§ 5-618, 5-620. *Miles v. District of Columbia*, 510 F.2d 188, 1975 U.S. App. LEXIS 15548 (1975).

Notice of decision of board for condemnation of insanitary buildings, sent to owner of buildings by regular mail, did not satisfy requirements of statute mandating that board forward notice by registered or certified mail even if board had previously sent registered letters to owner which had been returned unclaimed and owner had employed regular mail in her dealings with the board. D.C. Code § 5-625. *Miles v. District of Columbia*, 510 F.2d 188, 1975 U.S. App. LEXIS 15548 (1975).

Where service of notice to show cause why premises should not be condemned because of insanitary conditions and of condemnation order upon rental agent for premises was in accordance with statute and consistent with decided agency law, defective service as against owner of premises was not established. D.C. Code §§ 5-625(a), 5-633(b). *Urciolo v. Washington*, 305 A.2d 252, 1973 D.C. App. LEXIS 298 (1973).

§ 6-911. Interference with inspection or work.

No person shall interfere with the Mayor or with any person acting under authority and by direction of said Mayor in the discharge of his lawful duties, nor hinder, prevent, or refuse to permit any lawful inspection or the performance of any work authorized by this chapter to be done by or by authority and direction of said Mayor.

(May 1, 1906, 34 Stat. 159, ch. 2073, § 11; Aug. 28, 1954, 68 Stat. 888, ch. 1032.)

Section references. — This section is referred to in §§ 6-916 and 6-1111.

Prior Codifications. — 1981 Ed., § 5-711. 1973 Ed., § 5-626.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorga-

nization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to

§ 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 6-912. Destruction, removal, or concealment of copy of order of condemnation affixed to building.

No person shall, without the consent of the Board for the Condemnation of Insanitary Buildings, deface, obliterate, remove, or conceal any copy of any order of condemnation which has been affixed to any building or part of building by order of the said Board; and the owner and the person having custody of any building or part of building to which a copy or copies of any such order has been affixed shall, if said copy of said order has been to his knowledge defaced, obliterated, or removed, forthwith report that fact in writing to the Board (unless he had good reason to believe that such copy of such an order has been removed by authority of the Board), and if such copy of such order has been concealed, he shall forthwith expose the same to view.

(May 1, 1906, 34 Stat. 159, ch. 2073, § 12; Aug. 28, 1954, 68 Stat. 888, ch. 1032.)

Section references. — This section is referred to in §§ 6-916 and 6-1111.

Prior Codifications. — 1981 Ed., § 5-712. 1973 Ed., § 5-627.

§ 6-913. Review of order of condemnation.

The order of condemnation by the Board for the Condemnation of Insanitary Buildings may be appealed to the Superior Court of the District of Columbia for a review of the record and the Court may affirm, reverse, remove, or modify the decision, or take any other appropriate action the Court may consider necessary or appropriate. The Court shall examine the administrative record of the Board for the Condemnation of Insanitary Buildings to determine whether there has been procedural error, whether there is substantial evidence in the record to support the findings, or whether the action of the Board was in some manner arbitrary, capricious, or an abuse of discretion.

(May 1, 1906, 34 Stat. 160, ch. 2073, § 13; Aug. 28, 1954, 68 Stat. 888, ch. 1032; Apr. 27, 2001, D.C. Law 13-281, § 103(f), 48 DCR 1888.)

Section references. — This section is referred to in §§ 6-907, 6-914, and 6-1111.

Prior Codifications. — 1981 Ed., § 5-713. 1973 Ed., § 5-628.

Effect of amendments. — D.C. Law 13-281 rewrote the section which prior thereto read:

“Any owner of property affected by an order of condemnation issued under the authority contained in this chapter shall be entitled to a review of such order by the Condemnation Review Board established by the Mayor in accordance with the provisions of § 6-902, upon making application to said Condemnation Review Board, in writing, within 15 days from the date on which such owner has been served

notice of such order of condemnation, and upon payment of a fee of \$25. The said Condemnation Review Board shall be authorized by the Mayor to affirm, modify, or vacate any order of condemnation issued under the authority contained in this chapter.”

Legislative history of Law 13-281. — For D.C. Law 13-281, see notes following § 6-801.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of

Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office

of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Actions and proceedings.

Civil rights actions.

In general.

Actions and proceedings.

Owner of buildings which were demolished as insanitary did not waive statutory remedies of administrative appeal to the condemnation review board and judicial review by District of Columbia Superior Court where owner was not provided timely notice of board's final decision to proceed with demolition in order that owner could pursue the remedies. D.C. Code §§ 5-622, 5-629. *Miles v. District of Columbia*, 510 F.2d 188, 1975 U.S. App. LEXIS 15548 (C.A.D.C. 1975).

Where owners of premises failed to exercise their right to appeal condemnation order either to Condemnation Review Board or to superior court, question whether property was in fact in an insanitary condition when condemned was precluded and could not serve to confer jurisdiction on court in action wherein owners sought a temporary restraining order against demolition of property. D.C. Code §§ 5-628,

5-629. *Urciolo v. Washington*, 305 A.2d 252, 1973 D.C. App. LEXIS 298 (1973).

Civil rights actions.

Exhaustion of District of Columbia administrative remedies is not a prerequisite to bringing civil rights action pursuant to § 1983 in local courts of the District. 42 U.S.C. § 1983. *Miller v. District of Columbia*, 587 A.2d 213, 1991 D.C. App. LEXIS 36 (1991).

District of Columbia's condemnation statute did not foreclose § 1983 civil rights action based on alleged wrongful condemnation of landowner's property; statute provided no remedy for alleged procedural due process violation such as lack of notice and further hearing. 42 U.S.C. § 1983; D.C. Code 1981, § 5-703 et seq.; U.S. Const. Amends. 5, 14. *Miller v. District of Columbia*, 587 A.2d 213, 1991 D.C. App. LEXIS 36 (1991).

In general.

Statutory procedures established by Congress for review of a condemnation order made by Board for Condemnation of Insanitary Buildings are exclusive. D.C. Code §§ 5-628, 5-629. *Urciolo v. Washington*, 305 A.2d 252, 1973 D.C. App. LEXIS 298 (1973).

§ 6-914. Appeal from order of condemnation.

The owner of any building or part of a building condemned under the provisions of this act may appeal the ruling by the Superior Court of the District of Columbia under § 6-913 to the District of Columbia Court of Appeals.

(May 1, 1906, 34 Stat. 160, ch. 2073, § 14; Aug. 28, 1954, 68 Stat. 888, ch. 1032; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); Oct. 5, 1985, D.C. Law 6-42, § 468, 32 DCR 4450; Apr. 27, 2001, D.C. Law 13-281, § 103(g), 48 DCR 1888.)

Section references. — This section is referred to in §§ 6-907 and 6-1111.

Prior Codifications. — 1981 Ed., § 5-714. 1973 Ed., § 5-629.

Effect of amendments. — D.C. Law 13-281 rewrote the section which prior thereto read:

"The owner of any building or part of building condemned under the provisions of this chapter

may, within 15 days from the date on which the owner receives notice that an order of condemnation has been reviewed by the Condemnation Review Board ('Board') pursuant to § 6-902 and has been affirmed and modified by the Board, appeal to the District of Columbia Court of Appeals for judicial review pursuant to § 2-510."

Legislative history of Law 6-42. — Law 6-42, the “Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985,” was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June

25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

Legislative history of Law 13-281. — For D.C. Law 13-281, see notes following § 6-801.

CASE NOTES

ANALYSIS

In general.
Injunction.

In general.

Owner of buildings which were demolished as insanitary did not waive statutory remedies of administrative appeal to the condemnation review board and judicial review by District of Columbia Superior Court where owner was not provided timely notice of board’s final decision to proceed with demolition in order that owner could pursue the remedies. D.C. Code §§ 5-622, 5-629. *Miles v. District of Columbia*, 510 F.2d 188, 1975 U.S. App. LEXIS 15548 (C.A.D.C. 1975).

Statutory procedures established by Con-

gress for review of a condemnation order made by Board for Condemnation of Insanitary Buildings are exclusive. D.C. Code §§ 5-628, 5-629. *Urciolo v. Washington*, 305 A.2d 252, 1973 D.C. App. LEXIS 298 (1973).

Injunction.

Where owners of premises failed to exercise their right to appeal condemnation order either to Condemnation Review Board or to superior court, question whether property was in fact in an insanitary condition when condemned was precluded and could not serve to confer jurisdiction on court in action wherein owners sought a temporary restraining order against demolition of property. D.C. Code §§ 5-628, 5-629. *Urciolo v. Washington*, 305 A.2d 252, 1973 D.C. App. LEXIS 298 (1973).

§ 6-915. Neglect by tenants or occupants.

If an uninhabitable or insanitary condition which has led to the condemnation of a building or part of building has been caused in any part by the action or by the neglect of the tenant or tenants, occupant or occupants thereof, such tenant, tenants, occupant, or occupants shall be guilty of a misdemeanor and be liable to the penalties provided in § 6-916.

(May 1, 1906, ch. 2073, § 15; Aug. 28, 1954, 68 Stat. 889, ch. 1032; Apr. 27, 2001, D.C. Law 13-281, § 103(h), 48 DCR 1888.)

Section references. — This section is referred to in §§ 6-916 and 6-1111.

Prior Codifications. — 1981 Ed., § 5-715. 1973 Ed., § 5-630.

Effect of amendments. — D.C. Law 13-281

substituted “If an uninhabitable or insanitary condition” for “Whenever any insanitary condition”.

Legislative history of Law 13-281. — For D.C. Law 13-281, see notes following § 6-801.

§ 6-916. Violation of § 6-903, § 6-904, § 6-905, § 6-907, § 6-911, § 6-912, or § 6-915.

u Any person violating or aiding or abetting in violating § 6-903, § 6-904, § 6-905, § 6-907, § 6-911, § 6-912, or § 6-915 shall, upon conviction thereof in the Superior Court of the District of Columbia, upon information filed in the name of said District, be punished by a fine of not more than \$100 or by imprisonment for not more than 90 days; and each day on which such unlawful act is done or during which such unlawful negligence continues shall constitute a separate and distinct offense. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction by any person violating or

aiding and abetting in violating § 6-903, § 6-904, § 6-905, § 6-907, § 6-911, § 6-912, or § 6-915, or any rules or regulations issued under the authority of these sections, pursuant to Chapter 18 of Title 2. Adjudication of any infraction of this chapter shall be pursuant to Chapter 18 of Title 2.

(b) All fees and penalties collected under this chapter shall be deposited in the fund established by § 42-3131.01(b) and shall be expended for the general administration of the Board.

(May 1, 1906, 34 Stat. 161, ch. 2073, § 16; Aug. 28, 1954, 68 Stat. 889, ch. 1032; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); Oct. 5, 1985, D.C. Law 6-42, § 440, 32 DCR 4450; Dec. 7, 2004, D.C. Law 15-205, § 2072(d), 51 DCR 8441.)

Section references. — This section is referred to in §§ 6-907, 6-915, 6-1111, and 42-3131.01.

Prior Codifications. — 1981 Ed., § 5-716. 1973 Ed., § 5-631.

Effect of amendments. — D.C. Law 15-205 designated the existing text as subsection (a); and added subsec. (b).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2072(d) of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 2072(d) of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 6-42. — For legislative history of D.C. Law 6-42, see Historical and Statutory Notes following § 6-914.

Legislative history of Law 15-205. — For Law 15-205, see notes following § 6-623.01.

§ 6-917. Appropriations authorized.

Except as herein otherwise authorized all expenses incident to the enforcement of this chapter shall be paid from appropriations made from time to time for that purpose in like manner as other appropriations for the expenses of the District of Columbia.

(May 1, 1906, 34 Stat. 161, ch. 2073, § 17; Aug. 28, 1954, 68 Stat. 889, ch. 1032.)

Section references. — This section is referred to in § 6-1111.

Prior Codifications. — 1981 Ed., § 5-717. 1973 Ed., § 5-632.

§ 6-918. “Mayor” and “owner” defined; agent of owner.

(a) For the purposes of this chapter, the term “Mayor” shall mean the Mayor of the District of Columbia or his designated agent or agents; and the term “owner” shall mean:

(1) Any person, or any one of a number of persons, in whom is vested all or any part of the beneficial ownership, dominion, or title of the property found by the Mayor to be in an uninhabitable or insanitary condition;

(2) The committee, conservator, or legal guardian of an owner who is non compos mentis, a minor child, or otherwise under a disability; or

(3) A trustee elected or appointed, or required by law, to execute a trust, other than a trustee under a deed of trust to secure the repayment of a loan.

(b) Wherever under this chapter any act is to be performed by, or any notice

is to be given, an owner, such act may be performed by an agent of such owner, or such notice may be given to an agent of such owner who collects rent or otherwise acts as an agent for the owner in connection with said property.

(May 1, 1906, ch. 2073, § 18; Aug. 28, 1954, 68 Stat. 889, ch. 1032; Apr. 27, 2001, D.C. Law 13-281, § 103(i), 48 DCR 1888.)

Section references. — This section is referred to in § 6-1111.

Prior Codifications. — 1981 Ed., § 5-718. 1973 Ed., § 5-633.

Effect of amendments. — D.C. Law 13-281, in par. (1) of subsec. (a), substituted “uninhabitable or insanitary condition” for “insanitary condition”.

Legislative history of Law 13-281. — For D.C. Law 13-281, see notes following § 6-801.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of

Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

Service upon agent.

Notice of proposed demolition of insanitary buildings, sent to law partner of owner's deceased attorney, did not satisfy due process where the recipient of the notice responded that he was not an agent for receipt of notice and owner did not consider the recipient to be her attorney. D.C. Code §§ 5-618, 5-620. *Miles v. District of Columbia*, 510 F.2d 188, 1975 U.S. App. LEXIS 15548 (C.A.D.C. 1975).

Where service of notice to show cause why premises should not be condemned because of insanitary conditions and of condemnation order upon rental agent for premises was in accordance with statute and consistent with decided agency law, defective service as against owner of premises was not established. D.C. Code §§ 5-625(a), 5-633(b). *Urciolo v. Washington*, 305 A.2d 252, 1973 D.C. App. LEXIS 298 (1973).

§ 6-919. Suits and proceedings under prior law; time limits.

(a) All suits and proceedings instituted by or against the Board for the Condemnation of Insanitary Buildings in the District of Columbia created by former § 6-801, or the Board for the Condemnation of Insanitary Buildings established by the Commissioners under the authority of Reorganization Plan No. 5 of 1952, prior to September 27, 1954, shall be deemed to have been taken by, or instituted by or against, the Mayor of the District of Columbia.

(b) With respect to any building or part of building condemned by either of the Boards aforesaid prior to September 27, 1954, and which building or part of building stands condemned as of September 27, 1954, the 6-month period provided by § 6-903 shall commence running from September 27, 1954.

(c) Repealed.

(May 1, 1906, ch. 2073, § 19; Aug. 28, 1954, 68 Stat. 889, ch. 1032; Apr. 27, 2001, D.C. Law 13-281, § 103(j), 48 DCR 1888.)

Section references. — This section is referred to in § 6-1111.

Prior Codifications. — 1981 Ed., § 5-719.
1973 Ed., § 5-634.

Effect of amendments. — D.C. Law 13-281 repealed subsec. (c) which had read:

“(c) Wherever any provision of this chapter refers to any order of the Board for the Condemnation of Insanitary Buildings, such provision shall mean the order of such Board, or, if such order be reviewed by the Condemnation Review Board, as such order has been affirmed or modified by the latter Board; and wherever this chapter establishes any time limit within which there shall be compliance with an order of the Board for the Condemnation of Insanitary Buildings, such time limit shall begin running from the date on which the owner of the property affected by said order is served with notice thereof, or, if such order be reviewed by the Condemnation Review Board, from the date on which the owner of such property receives notice that such order has been affirmed or modified by the latter Board.”

Legislative history of Law 13-281. — For D.C. Law 13-281, see notes following § 6-801.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CHAPTER 10. COMMUNITY DEVELOPMENT.

Subchapter I. General

Sec.

- 6-1001. Findings and objectives.
- 6-1002. Community Development Program — Annual preparation and submission to Council; content; public hearings.
- 6-1003. Community Development Program — Activities permitted.
- 6-1004. Community Development Program — Implementation.
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Subchapter II. Housing and Community Development Reform Advisory Commission

- 6-1031. Short title.
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- 6-1041.01. Definitions.
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- 6-1041.03. Establishment of maximum rent and purchase price; publication requirement.
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Subchapter III. Comprehensive Housing Strategy Task Force

Sec.

- 6-1051. Establishment of Comprehensive Housing Strategy Task Force; composition.
- 6-1052. Development of the comprehensive housing strategy.
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Subchapter III-A. Workforce Housing Production Program

PART A

Workforce Housing Land Trust Design and Implementation Plan Approved

- 6-1061.01. Findings.
- 6-1061.02. Establishment of land trust and pilot program.
- 6-1061.03. Approval of the Plan.
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PART B

New Town at Capital City Market Development

- 6-1062.01. Short title.
- 6-1062.02. Definitions.
- 6-1062.03. Findings.
- 6-1062.04. Office of Planning.
- 6-1062.05. Authority of the Deputy Mayor for Economic Development.
- 6-1062.06. Development of conceptual plan.
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Subchapter IV. Neighborhood Investment Program

- 6-1071. Creation of Neighborhood Investment Fund.
- 6-1072. Neighborhood Investment Program.
- 6-1073. Neighborhood Investment Program Target Areas.

Subchapter I. General.

§ 6-1001. Findings and objectives.

(a) The Council finds and declares that the District of Columbia faces critical social, economic, and environmental problems arising in significant measures from:

(1) The concentration of poverty in areas of the city;

(2) Overcrowding and deterioration of housing, exacerbated by inadequate construction of new units for the growing number of households, and inadequate resources to provide for the rehabilitation of existing units for use by residents of the affected areas;

(3) Inadequate and inappropriate public and private investment and reinvestment in housing and other physical facilities, and related public and social services, resulting in the growth and persistence of urban slums and blight and the marked deterioration of the quality of the urban environment; and

(4) Lack of essential commercial facilities and services in many of the city's communities; and

(5) Need to improve the overall quality of the urban environment for the people of the District of Columbia.

(b) The Council further finds and declares that the future welfare of the District of Columbia and the well-being of its citizens depend on the establishment and maintenance of the District of Columbia as a viable physical, social, economic, and political community, and require for the benefit of the communities being directly affected:

(1) Systematic and sustained action to eliminate blight, to conserve and renew aging urban neighborhoods, to improve the living environment of low and moderate income families, and to develop new residential and economic activity centers throughout the District;

(2) Substantial expansion of and greater continuity in the scope and level of federal and local financial assistance together with increased private investment in support of community development activities;

(3) Continuing effort at all levels of government to develop programs to meet identified needs and to improve the functioning of departments and agencies responsible for planning, implementing, and evaluating community development efforts;

(4) Ongoing assistance to the secondary market for residential mortgages on housing for low-and moderate-income families by increasing the liquidity of mortgage investments and reinvesting investment proceeds for residential mortgage financing; and

(5) Management and liquidation of District of Columbia owned mortgage portfolios in an orderly manner in accordance with procurement requirements, with minimum loss to the District government.

(c) The primary objective of this chapter is the maintenance and development of the District of Columbia as a viable urban community, by providing decent housing, a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income. Consistent with this primary objective the chapter provides for the support of community development activities which are directed toward the following specific objectives:

(1) The elimination of slums and blight and the prevention of blighting influences and the deterioration of property and neighborhood and community facilities of importance to the welfare of the community;

(2) The elimination of conditions which are detrimental to health, safety, and public welfare and the establishment of programs to protect and improve the quality of the urban environment;

(3) The conservation and expansion of the District's housing stock in order to provide a suitable living environment for all persons, principally those of low and moderate income;

(4) The expansion and improvement of the quantity and quality of community services, particularly for persons of low and moderate income, which are essential for sound community development and for the development of a viable urban community;

(5) A more rational utilization of land and the better arrangement of residential, commercial, industrial, recreational, and other needed activity centers;

(6) The reduction of the isolation of income groups within the community and the promotion of an increase in the diversity and vitality of neighborhoods through the expansion of housing opportunities for persons of low and moderate income, particularly those with large families;

(7) The restoration and preservation of properties of special value for historic, architectural, or esthetic reasons;

(8) The establishment of data-gathering, planning, policy, and program development which will ensure effective monitoring of and programming responsive to the changing numbers, characteristics, and needs of the people of the District of Columbia;

(9) The continuation of development activities in those areas previously covered by urban renewal or neighborhood development plans until completed; and

(10) Promote access to mortgage credit throughout the District of Columbia by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for low-and moderate-income persons to acquire residential mortgage financing.

(d) Following the approval of a Community Development Program in such areas as the Council of the District of Columbia, upon recommendation of the Mayor, shall designate, the Mayor is authorized to prohibit any new construction in any area designated for this purpose as a community development area in a Community Development Program; new construction includes substantial remodeling, conversion, rebuilding, and enlargement or extension of major structural improvements on existing buildings, but does not include ordinary maintenance, remodeling, or changes necessary to continue occupancy.

(Dec. 16, 1975, D.C. Law 1-39, § 2, 22 DCR 3436; Feb. 26, 1981, D.C. Law 3-115, § 3, 27 DCR 5630; June 11, 1999, D.C. Law 13-9, §§ 2(a), (b), 46 DCR 3640.)

Prior Codifications. — 1981 Ed., § 5-901. 1973 Ed., § 5-1001.

Effect of amendments. — D.C. Law 13-9, in subsec. (b), struck the word "and" following "activities" in par. (2), substituted a semicolon for the period following "efforts" in par. (3), and

added pars. (4) and (5); and, in subsec. (c), struck the word "and" following "Columbia;" in par. (8), substituted "; and" for the final period in par. (9), and added par. (10).

Temporary Amendment of Section. — For temporary (225 day) amendment of section,

see § 2(a), (b) of Community Development Program Temporary Amendment Act of 1998 (D.C. Law 12-246, April 20, 1999, law notification 46 DCR 4159).

Emergency legislation. — For temporary (90-day) amendment of section, see § 2(a) and (b) of the Community Development Program Emergency Amendment Act of 1998 (D.C. Act 12-557, January 12, 1999, 45 DCR 635).

For temporary (90-day) amendment of section, see § 2(a), (b) of the Community Development Program Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-61, May 10, 1999, 46 DCR 4451).

Legislative history of Law 1-39. — Law 1-39, the “Community Development Act of 1975,” was introduced in Council and assigned Bill No. 1-135, which was referred to the Committee on Housing and Urban Development. The Bill was adopted on first and second readings on August 5, 1975, and September 9, 1975, respectively. Signed by the Mayor on October 9, 1975, it was assigned Act No. 1-135 and transmitted to both Houses of Congress for its review.

Legislative history of Law 3-115. — Law 3-115, the “Community Development Act of 1975 Amendment Act of 1980,” was introduced in Council and assigned Bill No. 3-404, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on November 25, 1980, and December 9, 1980, respectively. Signed by the Mayor on December 18, 1980, it was assigned Act No. 3-309 and transmitted to both Houses of Congress for its review.

Legislative history of Law 13-9. — Law 13-9, the “Community Development Program Amendment Act of 1999,” was introduced in Council and assigned Bill No. 13-49, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on February 2, 1999, and March 2, 1999, respectively. Signed by the Mayor on March 22, 1999, it was assigned Act No. 13-53 and transmitted to both Houses of Congress for its review. D.C. Law 13-9 became effective on June 11, 1999.

Mayor's Orders. — Delegation of functions with respect to Capital City Business and Industrial Park: See Mayor's Order 85-125, July 18, 1985.

Amendment of Mayor's Order 85-125, delegation of functions with respect to Capital City Business and Industrial Park: See Mayor's Order 88-64, March 15, 1988.

Editor's notes. — Capitol Gateway Project: D.C. Law 4-84 provided that new construction, substantial rehabilitation, subdivision formation, or street and alley closings in the Capitol Gateway Project area is prohibited.

Minor Modification of CD-15 Through Cd-23 Program Years Under the Community Development Block Grant Program Emergency Approval Resolution of 1998: Pursuant to Resolution 12-498, effective May 5, 1998, the Council approved a modification of CD-15 through CD-23 program years under the Community Development Block Grant Program administered by the Department of Housing and Community Development.

§ 6-1002. Community Development Program — Annual preparation and submission to Council; content; public hearings.

(a) The Mayor annually shall prepare and submit to the Council a proposed Community Development Program (as such program is defined or may hereafter be defined in title I of the Housing and Community Development Act of 1974 [42 U.S.C. § 5301 et seq.], which:

(1) Sets forth a summary of a 3-year community development plan which identifies community development needs, demonstrates a comprehensive strategy for meeting those needs, and specifies both short-and long-term community development objectives which have been developed in accordance with area-wide development planning and national urban growth policies;

(2) Describes a program which:

(A) Includes the activities to be undertaken to meet the identified community development needs and objectives, together with the estimated costs and location of such activities;

(B) Indicates the resources which are proposed to be made available toward meeting the identified needs and objectives;

(C) Indicates the environmental review status of proposed community development activities; and

(D) Includes activities designed to maximize the use and availability of funds designated to support community development projects;

(3) Describes a program designed to:

(A) Eliminate or prevent slums, blight, and deterioration where such conditions or needs exist;

(B) Provide improved community facilities and public improvements, including the provision of supporting health, social, and similar services where necessary and appropriate; and

(C) Clean and redevelop contaminated property areas as defined in § 2-1217.01;

(4) Includes a housing assistance plan which:

(A) Accurately surveys the condition of the housing stock in the community and defines the housing assistance needs of lower-income persons, including elderly persons and persons with disabilities, large families, persons living in overcrowded conditions, persons paying more than 25% of their income for rent, and persons displaced or to be displaced, residing in or expected to reside in the community during the implementation of the plan;

(B) Specifies a realistic annual goal for the number of dwelling units or persons to be assisted, including:

(i) The proposed number of new, rehabilitated, and existing dwelling units; and

(ii) The sizes and types of housing units and assistance proposed to meet the needs of lower-income persons in the community as defined in the plan; and

(C) Indicates the general locations of proposed housing for lower-income persons, with the objective of:

(i) Furthering the revitalization of the community, including the restoration and rehabilitation of stable neighborhoods to the maximum extent possible;

(ii) Promoting greater choice of housing opportunities and avoiding concentrations of assisted persons in areas containing a high proportion of low-income persons; and

(iii) Assuring the availability of public facilities and services adequate to serve proposed housing projects; and

(5) Includes such other materials, certifications, and assurances as may be required by law or regulation as conditions for financial assistance under the Housing and Community Development Act of 1974 [42 U.S.C. § 5301 et seq.], and any other such requirements as may be specified by District of Columbia law.

(b) In preparing the proposed Community Development Program, the Mayor shall:

(1) Provide citizens with all information concerning the amount of funds available for proposed community development and housing activities, the range of activities that may be undertaken, and other important program requirements;

(2) Hold at least 2 public hearings to obtain the views of citizens on community development and housing needs; and

(3) Provide citizens a full and meaningful opportunity to participate in the planning, development and evaluation of the annual Community Development Program and any amendments or modifications thereto.

(c) Prior to the exercise of any powers granted by this chapter, the Mayor shall have submitted the proposed Community Development Program to the Council, and the Council shall have approved the same by resolution following a public hearing thereon; provided, that the Council may approve the program with conditions and the program as so conditioned shall be the approved Community Development Program; and provided further, that an approved Community Development Program may be modified at any time in accordance with the procedures herein prescribed for its original approval. Notwithstanding the above, the Mayor shall have the authority to make minor modifications consistent with the intent of the approved program, only after such modifications have been submitted to the Council and have not been disapproved within 30 days, except that the Council may approve such modifications before the 30-day period has expired. The 30-day period for Council review shall not include Saturdays, Sundays, legal holidays, or days that pass during a recess of the Council.

(Dec. 16, 1975, D.C. Law 1-39, § 3, 22 DCR 3439; Aug. 1, 1985, D.C. Law 6-15, § 10, 32 DCR 3570; Feb. 24, 1987, D.C. Law 6-192, § 22, 33 DCR 7836; June 11, 1999, D.C. Law 13-9, § 2(c), 46 DCR 3640; June 13, 2001, D.C. Law 13-312, § 705(c), 48 DCR 3804; Apr. 24, 2007, D.C. Law 16-305, § 21(a), 53 DCR 6198.)

Cross references. — Eminent domain, see § 2-1219.19.

Intragovernmental cooperation, see § 2-1219.27.

Section references. — This section is referred to in §§ 6-1004 and 6-1006.

Prior Codifications. — 1981 Ed., § 5-902. 1973 Ed., § 5-1002.

Effect of amendments. — D.C. Law 13-9, in par. (a)(2), struck the word “and” following “appropriate;” in subpar. (B), substituted “; and” for the semicolon in subpar. (C), and added subpar. (D).

D.C. Law 13-312, in par. (3) of subsec. (a), added subpar. (C).

D.C. Law 16-305, in subsec. (a)(4)(A), substituted “persons and persons with disabilities” for “and handicapped persons”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(c) of Community Development Program Temporary Amendment Act of 1998 (D.C. Law 12-246, April 20, 1999, law notification 46 DCR 4159).

Emergency legislation. — For temporary (90-day) amendment of section, see § 2 of the District of Columbia Community Development Act of 1975 Emergency Amendment Act of 1991 (D.C. Act 9-91, October 21, 1991, 38 DCR 6576).

For temporary (90-day) amendment of section, see § 2(c) of the Community Development Program Emergency Amendment Act of 1998 (D.C. Act 12-557, January 12, 1999, 45 DCR 635).

For temporary (90-day) amendment of section, see § 2(c) of the Community Development Program Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-61, May 10, 1999, 46 DCR 4451).

Legislative history of Law 1-39. — For legislative history of D.C. Law 1-39, see Historical and Statutory Notes following § 6-1001.

Legislative history of Law 6-15. — Law 6-15, the “Legislative Veto Amendments Act of 1985,” was introduced in Council and assigned Bill No. 6-141, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 14, 1985 and May 28, 1985, respectively. Signed by the Mayor on June 7, 1985, it was assigned Act No. 6-30 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-192. — Law 6-192, the “Technical Amendments Act of 1986,” was introduced in Council and assigned Bill No. 6-544, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 5, 1986, and

November 18, 1986, respectively. Signed by the Mayor on December 10, 1986, it was assigned Act No. 6-246 and transmitted to both Houses of Congress for its review.

Legislative history of Law 13-9. — For legislative history of D.C. Law 13-9, see notes following § 6-1001.

Legislative history of Law 13-312. — Law 13-312, the “Brownfield Revitalization Amendment Act of 2000”, was introduced in Council and assigned Bill No. 13-531, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on November 8, 2000, and December 5, 2000, respectively. Signed by the Mayor on January 22, 2001, it was assigned Act No. 13-576 and transmitted to Both Houses of Congress for its review. D.C. Law 13-312 became effective on June 15, 2001.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 6-201.

References in text. — The Housing and Community Development Act of 1974, referred to in the introductory language and in paragraph (5) of subsection (a) of this section, is the Act of August 22, 1974, 88 Stat. 633, Pub. L. 93-383.

Resolutions. — Resolution 14-157, the “Consolidation Plan for the District of Columbia, Fiscal Year 2002 Action Plan Approval Resolution of 2001”, was approved effective July 10, 2001.

Resolution 14-487, the “Consolidated Plan for the District of Columbia, FY 2003 Action Plan, Approval Resolution of 2002”, was approved effective June 28, 2002.

Resolution 15-127, the “Consolidated Plan for the District of Columbia, Fiscal Year 2004 Action Plan, Approval Resolution of 2003”, was approved effective July 8, 2003.

Resolution 15-600, the “Consolidated Plan for the District of Columbia, Fiscal Year 2005 Action Plan Approval Resolution of 2004”, was approved effective July 13, 2004.

Resolution 15-602, the “The Fiscal Year 2004 Consolidated Plan Action Plan Amendment Authorizing the Use of Section 108 Loan Guarantee Funds for the Skyland Community Development Block Grant Section 108 Loan Guarantee Application Resolution of 2004”, was approved effective July 13, 2004.

Resolution 16-216, the “Consolidated Plan for the District of Columbia, Fiscal Years 2006-2010 and the Fiscal Year 2006 Action Plan Approval Resolution of 2005”, was approved effective July 6, 2005.

Resolution 16-689, the “Consolidated Plan for the District of Columbia, Fiscal Year 2007 Action Plan, Approval Resolution of 2006”, was approved effective July 20, 2006.

Resolution 16-921, the “Minor Modification to the Consolidated Plan for the District of Columbia, Fiscal Year 2007 Action Plan, Ap-

proval Resolution of 2006”, was approved effective December 2, 2006.

Resolution 17-272, the “FY 2008 Consolidated Annual Action Plan for the District of Columbia Approval Resolution of 2007”, was approved effective July 10, 2007.

Editor’s notes. — Community Development Block Grant Program: Pursuant to Resolution 5-766, the “Community Development Block Grant Program Resolution of 1984,” effective June 26, 1984, the Council approved the final statement of community development objectives and projected use of funds for the Tenth Year Community Development Block Grant Program and authorized the filing of the final statement.

Pursuant to Resolution 6-242, the “Community Development Block Grant Program Resolution of 1985,” effective July 9, 1985, the Council approved the final statement of community development objectives and projected use of funds for the Eleventh Year Community Development Block Grant Program, authorized the filing of the final statement, and approved modifications to the Sixth, Seventh, Eighth, Ninth, and Tenth Year Community Development Block Grant Programs.

Pursuant to Resolution 7-83, the “Community Development Block Grant Program Resolution of 1987,” effective July 14, 1987, the Council approved final statement of community development objectives and projected use of funds for the Thirteenth Year Community Development Block Grant Program, authorized the filing of the final statement, approved the Thirteenth Year Community Development Block Grant Program Description, and approved modifications to the final statement of community development objectives and projected use of funds for the Twelfth Year Community Development Block Grant Program.

Pursuant to Resolution 7-288, the “Community Development Block Grant Program Approval and Disapproval Resolution of 1988”, effective July 12, 1988, the Council approved the District of Columbia’s final statement of community development objectives and projected use of funds for the Fourteenth Year Community Development Block Grant Program, authorized the filing of the final statement, approved the Fourteenth Year Community Development Block Grant Program Description, approved budget modifications for the Fifth, Sixth, Seventh, Ninth, Tenth, Eleventh, Twelfth, and Thirteenth Year Community Development Block Grant Programs, approved modifications of Construction Assistance Program activities included in the Thirteenth Year Final Statement of Community Development Objectives and Projected Use of Funds and the Thirteenth Year Community Development Block Grant Program, and approved a modifi-

cation to the 13th Year Community Development Block Grant Program Description.

Pursuant to Resolution 8-73, the "Community Development Block Grant Program Approval Resolution of 1989", effective July 11, 1989, the Council approved the final statement of community development objectives and projected use of funds for the Fifteenth Year Community Development Block Grant Program, authorized the filing of the final statement, approved the Fifteenth Year Community Development Block Grant Program Description, and approved reprogramming of funds and budget revisions for the Second, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth and Fourteenth Year Community Development Block Grant Programs.

Pursuant to Resolution 8-256, the "Community Development Block Grant Program Approval Resolution of 1990", effective July 27, 1990, the Council approved the proposed District of Columbia's Final Statement of Community Development objectives and projected use of funds for the Sixteenth Year Community Development Block Grant Program, authorized the filing of the final statement with the United States Department of Housing and Urban Development, approved the Sixteenth Year Community Development Block Grant Program Description, and approved reprogramming of funds and budget revisions for the Fifteenth Year Community Development Block Grant Program and modification of the Fifteenth Year Final Statement.

Community Development Block Grant Program Emergency Approval Resolution of 1991: Pursuant to Resolution 9-91, effective July 19, 1991, the Council approved, on an emergency basis, the proposed District of Columbia's Final Statement of Community Development objectives and projected use of funds; authorized the filing of the final statement; approved the program description, and approved reprogramming of funds, budget revisions, and modification of the final statement.

Comprehensive Housing Affordability Strategy Emergency Approval Resolution of 1991: Pursuant to Resolution 9-141, effective November 22, 1991, the Council approved, on an emergency basis, with conditions, the District of Columbia's comprehensive housing affordability strategy.

Community Development Block Grant Program Nineteenth Year Emergency Approval Resolution of 1993: Pursuant to Resolution 10-120, effective August 6, 1993, the Council approved, on an emergency basis, the District of Columbia's Final Statement of Community Development objectives and projected use of funds for the Nineteenth Year Community Develop-

ment Block Grant Program, authorized the filing of the final statement with the United States Department of Housing and Urban Development, and approved the Nineteenth Year Community Development Block Grant Program Description.

Community Development Block Grant Program Twentieth Year Approval Resolution of 1994: Pursuant to Resolution 10-348, effective May 3, 1994, the Council approved the District of Columbia's Final Statement of Community Development objectives and projected use of funds for the Twentieth Year Community Development Block Grant Program; authorized the filing of the final statement with the United States Department of Housing and Urban Development; and approved the Twentieth Year Community Development Block Grant Program Description.

CD-18 and Prior Year Reprogramming Emergency Approval Resolution of 1994: Pursuant to Resolution 10-378, effective June 7, 1994, the Council approved, on an emergency basis, the District of Columbia's reprogramming of funds for the Eighteenth Year Community Development Block Grant Program and prior years and authorized the filing of the reprogramming with the United States Department of Housing and Urban Development.

Consolidated Plan and CD-19 Program Modification Approval Resolution of 1995: Pursuant to Resolution 11-99, effective July 11, 1995, the Council approved the Consolidated Plan for the District of Columbia, which incorporates four previously separate annual grant applications into a single submission for funding from the U.S. Department of Housing and Urban Development, for the Years 1996 to 2000, and a Program Modification for the Nineteenth Year Community Development Program (CD-19).

FY 1997 Action Plan approval Resolution of 1996: Pursuant to Resolution 11-415, effective July 3, 1996, Council approved the Fiscal Year 1997 Action Plan of the Consolidated Plan for the District of Columbia which incorporates four previously separate annual grant applications into a single submission for funding from the U.S. Department of Housing and Urban Development for the Twentieth Second Year Community Development Program (CD-22).

Fiscal Year 1999 Action Plan Approval Resolution of 1998: Pursuant to Resolution 12-590, effective July 7, 1998, the Council approved the Fiscal Year 1999 Action Plan of the Consolidated Plan for the District of Columbia which incorporates four previously separate annual grant applications into a single submission for funding from the U.S. Department of Housing and Urban Development for the Twenty-Fourth Year Community Development Program.

§ 6-1003. Community Development Program — Activities permitted.

An approved Community Development Program may include the following activities:

(1) The acquisition of real property (including air rights, water rights, and other interests therein) which is:

(A) Blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed from the standpoint of sound community development and growth;

(B) Appropriate for rehabilitation or conservation activities;

(C) Appropriate for the preservation or restoration of historic sites, the beautification of urban land, the conservation of open spaces, natural resources, and scenic areas, the provision of recreational opportunities, or the guidance of urban development;

(D) To be used for the provision of public works, facilities, and improvements; or

(E) To be used for other purposes;

(2) The acquisition, construction, reconstruction, or installation of public works, facilities, and site or other improvements — including neighborhood facilities, senior centers, historic properties, utilities, streets, street lights, water and sewer facilities, foundations and platforms for air right sites, pedestrian malls and walkways, and parks, playgrounds, and recreation facilities, flood and drainage facilities, parking facilities, solid waste disposal facilities, and fire protection services and facilities;

(3) Code enforcement in deteriorated or deteriorating areas in which such enforcement, together with public improvements and services to be provided, may be expected to arrest the decline of the area;

(4) Clearance, demolition, removal, and rehabilitation of buildings and improvements, including:

(A) Interim assistance to alleviate harmful conditions in which immediate public action is needed;

(B) Financing rehabilitation of privately owned properties through the use of direct loans, loan guarantees, grants, and other means when in support of Community Development Program objectives; and

(C) Demolition and modernization of publicly owned low-rent housing when necessary to protect health, safety, and the public welfare;

(5) Special projects directed to the removal of material and architectural barriers which restrict the mobility and accessibility of elderly persons and persons with disabilities;

(6) Payments to housing owners for losses of rental income incurred in holding for temporary periods housing units to be utilized for the relocation of individuals and families displaced by program activities under this chapter;

(7) Disposition (through sale, lease, donation, or otherwise) of any real property acquired pursuant to title, provided that the proceeds of any such disposition shall be expended only for approved Community Development Program activities;

(8) Provision of public services not otherwise available in areas where other activities authorized by this chapter are being carried out in a concentrated manner, if such services are determined to be necessary or appropriate to support such other activities, and if such services are directed toward:

(A) Improving the community's public services and facilities, including those concerned with the employment, economic development, crime prevention, child care, health, drug abuse, education, welfare, or recreation needs of persons residing in such areas; and

(B) Coordinating public and private development programs;

(9) Payment of the non-federal share required in connection with the federal grant-in-aid program undertaken as part of the Community Development Program subject to appropriations restrictions if any;

(10) Payment of the cost of completing a project funded under title I of the Housing Act of 1949 [42 U.S.C. § 5301 et seq.];

(11) Relocation payments and assistance for individuals, families, businesses, organizations, and farm operations displaced by activities authorized by this chapter;

(12) Activities necessary:

(A) To develop a comprehensive community development plan; and

(B) To develop a policy-planning-management capacity so that the District of Columbia may more rationally and effectively:

(i) Determine its needs;

(ii) Set long-term goals and short-term objectives;

(iii) Devise programs and activities to meet these goals;

(iv) Evaluate the progress of such programs in accomplishing these goals and objectives; and

(v) Carry out management, coordination, and monitoring of activities necessary for effective planning implementation;

(13) Payment of reasonable administrative costs and carrying charges related to the planning and execution of community development and housing activities, including the provision of information and resources to residents of areas in which community development and housing activities are proposed;

(13A) The selling, at private or public sale, with public bidding, of any mortgage or other obligation held under the Community Development Program; and

(14) Any activity made eligible for financial assistance by the Housing and Community Development Act of 1974 [42 U.S.C. § 5301 et seq.], or any amendment thereto.

(Dec. 16, 1975, D.C. Law 1-39, § 4, 22 DCR 3443; June 11, 1999, D.C. Law 13-9, § 2(d), 46 DCR 3640; Apr. 24, 2007, D.C. Law 16-305, § 21(b), 53 DCR 6198.)

Section references. — This section is referred to in § 6-1004.

Prior Codifications. — 1981 Ed., § 5-903. 1973 Ed., § 5-1003.

Effect of amendments. — D.C. Law 13-9,

in par. (13), struck the word “and” following “proposed;” and added par. (13A).

D.C. Law 16-305, in par. (5), substituted “persons and persons with disabilities” for “and handicapped persons”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(d) of Community Development Program Temporary Amendment Act of 1998 (D.C. Law 12-246, April 20, 1999, law notification 46 DCR 4159).

Temporary Addition of Section. — For temporary (225 day) addition, see § 2 of Comprehensive Housing Strategy Temporary Act of 2003 (D.C. Law 15-52, December 9, 2003, law notification 51 DCR 1787).

Emergency legislation. — For temporary (90-day) amendment of section, see § 2(d) of the Community Development Program Emergency Amendment Act of 1998 (D.C. Act 12-557, January 12, 1999, 45 DCR 635).

For temporary (90-day) amendment of section, see § 2(d) of the Community Development Program Congressional Review Emergency

Amendment Act of 1999 (D.C. Act 13-61, May 10, 1999, 46 DCR 4451).

Legislative history of Law 1-39. — For legislative history of D.C. Law 1-39, see Historical and Statutory Notes following § 6-1001.

Legislative history of Law 13-9. — For legislative history of D.C. Law 13-9, see notes following § 6-1001.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 6-201.

References in text. — Title I of the Housing Act of 1949, referred to in paragraph (10) of this section, is title I of the Act of July 15, 1949, 63 Stat. 414, ch. 338.

The Housing and Community Development Act of 1974, referred to in paragraph (14) of this section, is the Act of August 22, 1974, 88 Stat. 633, Pub. L. 93-383.

§ 6-1004. Community Development Program — Implementation.

(a) After the approval of a Community Development Program by the Council pursuant to § 6-1002, the Mayor is authorized to submit to the Secretary of Housing and Urban Development an application, meeting the requirements of the Housing and Community Development Act of 1974 and regulations issued pursuant thereto or amendments thereof, for financial assistance to implement said program. In connection therewith, the Mayor is authorized to:

(1) Consent to assume the status of a responsible federal official under the National Environmental Policy Act of 1969 [42 U.S.C. § 4321 et seq.];

(2) Consent, on behalf of the District government and himself, to accept the jurisdiction of the federal courts for the purpose of enforcement of his responsibilities as such an official;

(3) Give such other pledges, assurances, and certifications as may be required by the Housing and Community Development Act of 1974 and regulations issued pursuant thereto or amendments thereof; and

(4) Accept grants, gifts, donations, bequests, and services from any source to assist in carrying out any of the purposes of this chapter.

(b) In implementing an approved Community Development Program the Mayor is authorized to perform or conduct any of the activities described in § 6-1003 and to do all other things necessary to carry out the intent of such program in accordance with any existing provisions of law not inconsistent herewith. Any power granted to the Mayor or any officer, employee, agency, or instrumentality of the District government by any other law may, in addition to the purposes specified therein, be exercised in furtherance of the carrying out of an approved Community Development Program.

(c) Powers and functions vested in the Mayor by this chapter may be delegated by him to any officer, employee, agency, or instrumentality of the District government by administrative order, and any officer, employee, agency, or instrumentality so designated is authorized to perform the same in accordance with the terms of the delegation.

(d) The Mayor is authorized to issue, amend, and revoke such rules and regulations as he deems necessary to carry out the purposes of this chapter.

(e) Under the Community Development Program, the Mayor may offer Community Development Program loans for sale on the secondary market in order to generate additional funds to make more loans available to low-and moderate-income persons.

(f)(1) The sale of mortgages under this section shall be confined, so far as practicable, to mortgages which are deemed by the Mayor to be of such quality, type, and class as to meet, generally, the purchase standards imposed by private institutional mortgage investors. The establishment of the sale price in the secondary market shall be consistent with the expectation that such sale be effected only at such price and on such terms as will reasonably prevent excessive loss to the District government and prevent excessive use of the District's assets.

(2) The establishment of the sale price shall be submitted to the Council for a 14-day period of review, excluding days of Council recess, beginning on the day that the resolution is transmitted by the Mayor and received by the Chairman of the Council. To initiate a disapproval of the sale price submitted to the Council, a member of the Council shall, within the 14-day period, file a written notice of disapproval with the Secretary to the Council. If this notice is given, the Council may consider and take final action to disapprove the resolution within 30 days after the notice has been filed. If the Council does not adopt a resolution disapproving the established sale price, then the resolution will be deemed approved.

(Dec. 16, 1975, D.C. Law 1-39, § 5, 22 DCR 3448; June 11, 1999, D.C. Law 13-9, § 2(e), 46 DCR 3640.)

Prior Codifications. — 1981 Ed., § 5-904.
1973 Ed., § 5-1004.

Effect of amendments. — D.C. Law 13-9 added subsecs. (e) and (f).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(e) of Community Development Program Temporary Amendment Act of 1998 (D.C. Law 12-246, April 20, 1999, law notification 46 DCR 4159).

Emergency legislation. — For temporary (90-day) amendment of section, see § 2(e) of the Community Development Program Emergency Amendment Act of 1998 (D.C. Act 12-557, January 12, 1999, 45 DCR 635).

For temporary (90-day) amendment of section, see § 2(e) of the Community Development Program Congressional Review Emergency

Amendment Act of 1999 (D.C. Act 13-61, May 10, 1999, 46 DCR 4451).

Legislative history of Law 1-39. — For legislative history of D.C. Law 1-39, see Historical and Statutory Notes following § 6-1001.

Legislative history of Law 13-9. — For legislative history of D.C. Law 13-9, see notes following § 6-1001.

References in text. — The Housing and Community Development Act of 1974, referred to in the first sentence in the introductory paragraph and in paragraph (3) of subsection (a) of this section, is the Act of August 22, 1974, 88 Stat. 633, Pub. L. 93-383.

The National Environmental Policy Act of 1969, referred to in paragraph (1) of subsection (a) of this section, is the Act of January 1, 1970, 83 Stat. 852, Pub. L. 91-190.

§ 6-1005. Acquisition and disposition of real property.

(a) Real property acquired for the purposes of this chapter shall be acquired pursuant to subchapter II of Chapter 13 of Title 16. No such property shall be acquired unless its acquisition be authorized by the Council after notice of public hearing.

(b) Real property may also be acquired through gift, donation, bequest, assignment, or voluntary sale by the owner.

(c)(1) For the purposes of this chapter, the Mayor may dispose of any real property owned by the District of Columbia by negotiation or public or private bid, on such terms and conditions as he deems necessary to accomplish the purposes of the chapter with the consent of the Council, provided that prior to any such disposition there shall be a public hearing on the proposed terms and conditions after at least 30 days public notice. A proposed disposition shall be in accordance with § 10-801(c)-(e). Each proposed disposition shall be submitted to the Council for approval, in whole or in part, by resolution.

(2) The proposed resolution to provide for the disposition of real property pursuant to paragraph (1) of this subsection shall be submitted to the Council for a 90-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed disposition of the property, in whole or in part, by resolution within the 90-day period, the proposed resolution shall be deemed approved. Nothing in this section shall affect any requirements imposed upon the Mayor by subchapter I of Chapter 5 of Title 2.

(2A)(A) Approval of the resolution pertaining to the disposition or offering document by the Council under paragraph (1) of this subsection shall expire one year after the effective date of the approval resolution unless an exclusive right agreement has been executed, subject to the provisions of this section. If the Mayor determines before the end of the one-year period that the property cannot be disposed of, or that an exclusive right agreement pertaining to the property cannot be executed, within the one-year period, the Mayor may submit to the Council, no later than 30 days, not including Saturdays, Sundays, legal holidays or days of Council recess, before the end of the one-year period, a resolution seeking additional time for the execution of an exclusive right agreement pertaining to the property. The resolution shall include a detailed status report on efforts made toward execution of an exclusive right agreement pertaining to the property and the reasons for the inability to execute an exclusive right agreement pertaining to the property within the one-year period. If the Council does not take action to approve or disapprove the resolution within 30 days of receipt of the resolution, not including Saturdays, Sundays, legal holidays, or days of Council recess, the resolution shall be deemed approved.

(B)(i) If an exclusive right agreement is executed pertaining to property to be disposed of under this section, the agreement shall expire one year after the date of execution of the agreement unless:

(I) A land disposition agreement has been executed, subject to the provisions of this section; or

(II) The Mayor grants an extension of the expiration date, not to exceed 12 months. An extension shall be based on a determination that special factors exist justifying the extension. Factors considered shall include the need for zoning changes, historic preservation, street and alley closings, abatement of environmental hazards, and taking by eminent domain.

(ii) If the Mayor determines before the end of the two-year period that no land disposition agreement can be executed within the two-year period, the

Mayor may submit to the Council, no later than 30 days, not including Saturdays, Sundays, legal holidays or days of Council recess, before the end of the two-year period a resolution seeking additional time for the disposition of the property. The resolution shall include a detailed status report on efforts made toward disposition of the property and the reasons for the inability to dispose of the property within the two-year period. If the Council does not take action to approve the resolution within the 30-day period, the resolution shall be deemed approved.

(3) For real property under the jurisdiction of the Board of Education ("Board") that the Board has determined to be no longer needed for educational purposes and for which jurisdiction has been transferred by the Board to the Mayor for disposal in accordance with the provisions of this chapter, the Mayor shall submit to the Council a report on whether the Mayor intends for the property to be used by another agency of the District government. The report shall be submitted to the Council by the Mayor within 90 days of the transfer of the property to the Mayor by the Board. If the report is not submitted to the Council within the 90-day period, the Mayor shall dispose of the property in accordance with the provisions of this chapter and shall transmit to the Council the resolution required by paragraph (1) of this subsection within 180 days of the date of the transfer of the property to the Mayor by the Board.

(Dec. 16, 1975, D.C. Law 1-39, § 6, 22 DCR 3450; Mar. 15, 1990, D.C. Law 8-96, § 5, 37 DCR 795; Sept. 11, 1990, D.C. Law 8-158, § 4, 37 DCR 4167; Apr. 3, 2001, D.C. Law 13-226, § 3(b), 48 DCR 1603.)

Cross references. — Board of Education Real Property Improvement and Maintenance Fund, see § 10-802.

Section references. — This section is referred to in § 10-801.

Prior Codifications. — 1981 Ed., § 5-905.
1973 Ed., § 5-1005.

Effect of amendments. — D.C. Law 13-226 added subsec. (2A).

Emergency legislation. — For temporary (90-day) amendment of section, see § 3(b) of the Redevelopment Land Agency Disposition Review Emergency Amendment Act of 2000 (D.C. Act 13-431, August 14, 2000, 47 DCR 7462).

For temporary (90 day) amendment of section, see §§ 3(b) and 6(b) of the Redevelopment Land Agency Disposition Review Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-524, January 11, 2001, 48 DCR 624).

Legislative history of Law 1-39. — For legislative history of D.C. Law 1-39, see Historical and Statutory Notes following § 6-1001.

Legislative history of Law 8-96. — Law 8-96, the "Disposal of District Owned Surplus Real Property Amendment Act of 1989," was introduced in Council and assigned Bill No. 8-302, which was referred to the Committee on Government Operations. The Bill was adopted

on first and second readings on November 21, 1989, and December 19, 1989, respectively. Approved without the signature of the Mayor on January 18, 1990, it was assigned Act No. 8-148 and transmitted to both Houses of Congress for its review.

Legislative history of Law 8-158. — Law 8-158, the "Board of Education Real Property Disposal Act of 1990," was introduced in Council and assigned Bill No. 8-383, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on May 15, 1990, and May 29, 1990, respectively. Signed by the Mayor on June 18, 1990, it was assigned Act No. 8-220 and transmitted to both Houses of Congress for its review.

Legislative history of Law 13-226. — For D.C. Law 13-226, see notes following § 6-301.06.

Delegation of Authority. — Delegation of Authority to Approve or to Disapprove the Acquisition and Disposition of Real Estate, by Sale, Lease or Otherwise, see Mayor's Order 2003-161, November 17, 2003 (50 DCR 10197).

Delegation of Authority to the Deputy Mayor for Planning and Economic Development—Authority to Acquire Real Property and Undertake Capital Improvements at Marvin Gaye Park, see Mayor's Order 2009-2, January 8, 2009 (56 DCR 2015).

Delegation of Authority to the Department of Housing and Community Development—Monitoring and Enforcement of Affordable Dwelling Unit Requirements, see Mayor's Order 2009-112, June 18, 2009 (56 DCR 6859).

Editor's notes. — Community Development Block Grant Program: Pursuant to Resolution 7-288, the "Community Development Block Grant Program Approval and Disapproval Resolution of 1988," effective July 12, 1988, the Council approved the District of Columbia's final statement of community development objectives and projected use of funds for the Fourteenth Year Community Development Block Grant Program, authorized the filing of the final statement, approved the Fourteenth Year Community Development Block Grant Program Description, approved budget modifications for the Fifth, Sixth, Seventh, Ninth, Tenth, Eleventh, Twelfth, and Thirteenth Year Community Development Block Grant Programs, approved modifications of Construction Assistance Program activities included in the Thirteenth Year Final Statement of Community Development Objectives and Projected Use of Funds and the Thirteenth Year Community Development Block Grant Program, and approved a modification to the 13th Year Community Development Block Grant Program Description.

Center Leg Freeway Air Rights Development Approval Resolution of 1990: Pursuant to Resolution 8-333, effective January 11, 1991, the Council approved the proposal of the Washington Development Group, Inc., to develop the air space above the Center Leg Freeway (I-395), bounded by Mass. Ave., E, 2nd, and 3rd Street, N.W.

Proposal to Acquire Land Underlying the Whitelaw Hotel Emergency Approval Resolution of 1991: Pursuant to Resolution 9-143, effective November 22, 1991, the Council approved, on an emergency basis, a proposal to acquire and leaseback a parcel of land pursuant to the District of Columbia Land Acquisition for Housing Development Opportunities ("LAHDO") Program.

Unsolicited Proposal to Develop a Portion of Land Located at Benning Road Between Hanna Place and H Street, S.E. Emergency Approval Resolution of 1992

Pursuant to Resolution 9-300, effective July 7, 1992, the Council approved, on an emergency basis, acceptance of an unsolicited proposal to acquire and develop a portion of land located at Benning Road Between Hanna Place and H Street, S.E.

Proposal to Acquire Land Underlying the Savannah Park Apartments Emergency Approval Resolution of 1992: Pursuant to Resolution 9-306, effective July 24, 1992, the Council approved, on an emergency basis, a proposal to

acquire land underlying the Savannah Park Apartments.

Unsolicited Proposal to Acquire and Develop Parcel 23-A in the 14th Street Urban Renewal Area Emergency Approval Resolution of 1993: Pursuant to Resolution 10-164, effective October 22, 1993, the Council approved, on an emergency basis, a development proposal to develop Parcel 23-A located at 1333 Belmont Street, N.W. and legally described as Lot 120 in Square 2868.

Acceptance of a Proposal for the Negotiated Disposition and Rehabilitation of the Roosevelt for Senior Citizens Resolution of 1994: Pursuant to Resolution 10-354, effective May 3, 1994, the Council approved a proposal submitted by Access Housing, Inc. for a negotiated disposition and rehabilitation of the Roosevelt for Senior Citizens, 2101 16th Street, N.W.

Unsolicited Proposal Submitted by the Potomac Electric Power Company for the Negotiated Disposition of 1501 Alabama Street, S.E., Approval Resolution of 1994: Pursuant to Resolution 10-481, effective December 6, 1994, the Council approved an unsolicited proposal submitted by the Potomac Electric Power Company for the negotiated disposition of 1501 Alabama Street, S.E.

Acceptance of a Proposal for the Negotiated Disposition and Rehabilitation of the Roosevelt for Senior Citizens Resolution of 1994: Pursuant to Resolution 10-354, effective May 3, 1994, the Council approved a proposal submitted by Access Housing, Inc. for a negotiated disposition and rehabilitation of the Roosevelt for Senior Citizens, 2101 16th Street, N.W.

Unsolicited Proposal Submitted by IDS/Turner Limited Partnership for the Negotiated Disposition of Square 4120, Lot 800 Approval Resolution of 1994: Pursuant to Resolution 10-482, effective December 6, 1994, the Council approved an unsolicited proposal submitted by IDS/Turner Limited Partnership for the negotiated disposition of Square 4120, Lot 800 located at 18th and Bryant Streets, N.E.

Disposal of surplus real property: Section 2 of D.C. Law 8-96 provided that for the purposes of this act, the term "real property" means land titled in the name of the District of Columbia ("District") or in which the District has a controlling interest and includes all structures of a permanent character erected thereon or affixed thereto, any natural resources located thereon or thereunder, all riparian rights attached thereto, or any air space located above or below the property or any street or alley under the jurisdiction of the Mayor.

Unsolicited Proposal to Develop the Martin Luther King, Jr., Development, Lot 829, Square 5770 Approval Resolution of 1996: Pursuant to Resolution 11-365, effective June 4, 1996, Council reviewed an approved an Unsolicited Proposal to Develop Lot 829, Square 5770,

located at 1909—1913 Martin Luther King, Jr., Avenue, N.W., and legally described as Lot 829, Square 5770.

Unsolicited Proposal Submitted by Crane Rental Company for the Negotiated Disposition of Property located in Lots 227 and 900 in Square 4107, and Lots 826 and 827 in Square 4103, on W Street, N.E., Approval Resolution of 1996: Pursuant to Resolution 11-366, effective June 4, 1996, Council reviewed and approved an Unsolicited Proposal submitted by Crane Rental Company for the negotiated disposition of property located in Lots 227 and 900 in Square 4107, and Lots 826 and 827 in Square 4103, on W Street, N.E.

Negotiated Disposition of Property Located in Square 272, Lot 45, in the 1200 block of V Street, N.W., to Donatelli & Klein, Inc., Approval Resolution of 1996: Pursuant to Resolution 11-367, effective June 4, 1996, Council approved a negotiated disposition of property located in Square 272, Lot 45, at the intersections of 13th Street, N.W., 12th Street, N.W., V Street, N.W., and W Street, N.W., to Donatelli & Klein, Inc.

Request for Offers for the Disposition for the Roosevelt Apartment for Senior Citizens, 2101 16th Street, N.W., Lot 802, in Square 188, Approval Resolution of 1996: Pursuant to Resolution 11-633, effective December 3, 1996, Council approved the Request for Offers for the disposition of the Roosevelt Apartment for Senior Citizens located at 2101 16th Street, N.W., and legally described as Lot 802, Square 188, in Ward 1.

Unsolicited Proposal to Develop the Anacostia Northern Gateway Project Approval Resolution of 1997: Proposed Resolution 12-0111, the "Unsolicited Proposal to Develop the Anacostia Northern Gateway Project Approval Resolution of 1997" was deemed approved, effective Feb. 12, 1997.

Sections 4 to 6 of D.C. Law 17-253 provided:

"Sec. 4. Certain permanent easements authorized.

"Notwithstanding the procedures and requirements set forth in An Act Authorizing the sale of certain real estate in the District of Columbia no longer required for public purposes, approved August 5, 1939 (53 Stat. 1211; D.C. Official Code § 10-801 et seq.), the Mayor may:

"(1) Grant, for a period of greater than 20 years, subsurface easements under the portions of 2nd Street, N.W., and 3rd Street, N.W., between Massachusetts Avenue, N.W., and E Street, N.W., and the portion of Massachusetts Avenue, N.W., between 2nd Street, N.W., and 3rd Street, N.W., for the purposes of the construction and maintenance of a deck or other supporting structure beneath the streets and for the occupancy of the easement area by such deck and structures and for other purposes

consistent with the land disposition agreement to be entered into pursuant to the Center Leg Freeway (Interstate 395) Fee and Air Rights Disposition Emergency Approval Resolution of 2007, effective July 10, 2007 (Res. 17-291; 54 DCR 7461) ('Disposition Approval Resolution'); and

"(2) Convey to the Purchaser, as such term is defined in the Disposition Approval Resolution, the real property on which the current Interstate 395 approach and exit ramps ('highway ramps') within the Property, as the term 'Property' is defined in the Disposition Approval Resolution, are located, in accordance with the following conditions:

"(A) If a current highway ramp is relocated within the Property, the Mayor may convey to the Purchaser fee title to the real property from which the former highway ramp was removed if the District receives from the Purchaser, at the same time that the real property from which the former highway ramp was removed is conveyed to the Purchaser, fee title from the Purchaser to the real property (which may exclude the air rights beginning at 14 feet 6 inches above the upper surface of the pavement of the ramp) upon which the new highway ramp and associated and supporting structures are constructed.

"(B) If a current highway ramp is removed, the Mayor may convey to the Purchaser fee title to the real property from which the ramp was removed if the Purchaser pays to the District fair market value for the real property as such fair market value is calculated pursuant to the Appraisal, as such term shall be defined in the land disposition agreement to be entered into pursuant to the Disposition Approval Resolution.

"Sec. 5. Authorization to enter into a contract for the relocation of the shared computer center.

"Notwithstanding the procedures and requirements set forth in the District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code § 2-301.01 et seq.), the Mayor may enter into a contract or other agreement whereby the purchaser of the property authorized to be disposed of pursuant to the Center Leg Freeway (Interstate 395) Fee and Air Rights Disposition Emergency Approval Resolution of 2007, effective July 10, 2007 (Res. 17-291; 54 DCR 7461) ('Disposition Approval Resolution'), or a designee of the purchaser approved by the Mayor, shall relocate the Shared Computer Center from the Property, as the term 'Property' is defined in the Disposition Approval Resolution, to a site designated by the District and shall be compensated for the costs associated with the relocation, including, if applicable, the costs of the design, improvement, and physical relocation of the equipment and other features of the Shared Computer Center and

the leasing of a new location for the Shared Computer Center.

"Sec. 6. Certified business enterprise participation.

"The entities identified in section 2(b)(14)(A) of the Center Leg Freeway (Interstate 395) Fee and Air Rights Disposition Emergency Approval Resolution of 2007, approved July 10, 2007 (Res. 17-291; 54 DCR 7461) ('Disposition Approval Resolution') shall be considered, with

respect to the development project on the Property, as the term 'Property' is defined in the Disposition Approval Resolution, fully qualified local, small, and disadvantaged business enterprises under section 2349a of the Small, Local, and Disadvantaged Business Enterprises Development and Assistance Act of 2005, effective March 2, 2007 (D.C. Law 16-33; D.C. Official Code § 2-218.49a)."

§ 6-1006. Rehabilitation of private property; loans and grants; insurance; determination of public use.

(a) The Mayor is hereby authorized to establish a Rehabilitation Loan and Grant Fund and to make or contract to make publicly-financed low-interest loans and grants to owners of property for the rehabilitation and improvement of such property in accordance with a Community Development Program approved pursuant to § 6-1002.

(b) The Mayor is further authorized to establish a Rehabilitations Loan Insurance Fund and to insure or contract to insure privately-financed loans to owners of property for the rehabilitation and improvement of such property in accordance with a Community Development Program approved pursuant to § 6-1002.

(c) Any and all publicly-financed rehabilitation loans and grants made by the Mayor, and any and all insurance commitments made by the Mayor in connection with privately-financed rehabilitation loans, and any and all money used or expended by the Mayor in connection with said loans or insurance commitments pursuant to the hereinabove described authority, and any and all acts performed by the Mayor in connection with any powers granted pursuant to this section, are hereby declared to be needed, contracted for, expended, or exercised for a public use.

(Dec. 16, 1975, D.C. Law 1-39, § 7, 22 DCR 3450.)

Prior Codifications. — 1981 Ed., § 5-906.
1973 Ed., § 5-1006.

legislative history of D.C. Law 1-39, see Historical and Statutory Notes following § 6-1001.

Legislative history of Law 1-39. — For

§ 6-1007. Construction; severability.

(a) To the extent that any provisions of this chapter are inconsistent with the provisions of any other laws within the jurisdiction of the Council, the provisions of this chapter shall prevail and shall be deemed to supersede the provisions of such laws.

(b) If any provisions of this chapter be held invalid, the remainder of the chapter shall not be impaired thereby, but shall continue in full force and effect.

(Dec. 16, 1975, D.C. Law 1-39, § 8, 22 DCR 3451.)

Prior Codifications. — 1981 Ed., § 5-907. 1973 Ed., § 5-1007.

legislative history of D.C. Law 1-39, see Historical and Statutory Notes following § 6-1001.

Legislative history of Law 1-39. — For

Subchapter II. Housing and Community Development Reform Advisory Commission.

§ 6-1031. Short title.

This subchapter may be cited as the “Housing and Community Development Reform Advisory Commission Act of 2002”.

(Oct. 1, 2002, D.C. Law 14-190, § 1141, 49 DCR 6968.)

Emergency legislation. — For temporary (90 day) addition of §§ 6-1031 to 6-1037, see §§ 1141 to 1147 of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

Legislative history of Law 14-190. — Law 14-190, the “Fiscal Year 2003 Budget Support Act of 2002”, was introduced in Council and

assigned Bill No. 14-609, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 7, 2002, and June 4, 2002, respectively. Signed by the Mayor on July 3, 2002, it was assigned Act No. 14-403 and transmitted to both Houses of Congress for its review. D.C. Law 14-190 became effective on October 1, 2002.

§ 6-1032. Establishment of the Housing and Community Development Reform Advisory Commission; membership; chairperson.

(a) There is established a Housing and Community Development Reform Advisory Commission (“Commission”).

(b) The Commission shall consist of the following 7 members:

(1) Three ex officio members, as follows:

(A) The Chairman of the Council of the District of Columbia (“Council”), or a designee of the Chairman;

(B) The chairperson of the Council’s Committee on Economic Development, or a designee of the chairperson; and

(C) The Director of the Department of Housing and Community Development (“Director”), or a designee of the Director;

(2) Four public members, appointed by the Mayor, subject to the advice and consent of the Council under § 1-523.01(f). The public members shall be nominated as follows:

(A) Two members shall have expertise in government regulations related to grants managed by the U.S. Department of Housing and Urban Development; provided, that the member shall not be a current or former officer, employee, agent, or other affiliate of an organization that has received funding from the Department of Housing and Community Development within the prior 5 years; and

(B) One member shall have expertise in human resources and organizational management; provided, that the member shall not be a current or former officer, employee, agent, or other affiliate of an organization which has received funding from the Department of Housing and Community Development within the prior 5 years; and

(C) One member shall have expertise in financial systems and information technology; provided, that the member shall not be a current or former officer, employee, agent, or other affiliate of an organization which has received funding from the Department of Housing and Community Development within the prior 5 years.

(c) The Mayor shall nominate the public members of the Commission within 45 days after October 1, 2002.

(d) The Chairperson of the Commission shall be designated by the Mayor in consultation with the chairperson of the Council Committee on Economic Development.

(Oct. 1, 2002, D.C. Law 14-190, § 1142, 49 DCR 6968.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Housing and Community Development Reform Advisory Commission Temporary Amendment Act of 2003 (D.C. Law 15-91, March 10, 2004, law notification 51 DCR 3611).

(90 day) amendment of section, see § 2 of Housing and Community Development Reform Advisory Commission Emergency Amendment Act of 2003 (D.C. Act 15-223, November 25, 2003, 50 DCR 10700).

Legislative history of Law 14-190. — For Law 14-190, see notes following § 6-1031.

§ 6-1033. Responsibilities of the Commission; report.

(a) The Commission shall review the operations and administration of the Department of Housing and Community Development (“Department”) and recommend to the Council and the Mayor legislative, regulatory, and administrative changes to improve the operation and administration of the Department.

(b) Before the first meeting of the Commission, the Director shall provide to the members of the Commission copies of all relevant studies, reports, correspondence, memoranda, and strategic plans maintained by the Department and completed within the previous 3 years which are related to matters within the purview of the Commission. The documents provided shall include notifications, correspondence, and reports from or to the Department of Housing and Urban Development, reports of the Inspector General, Department spending plans; Department strategic plans, Department policies and manuals, and correspondence with the Council, Council committees, and members of the Council. The Commission may request additional documents pursuant to § 6-1034(b).

(c) The Commission shall provide an assessment or recommendations on the following issues:

(1) Whether reforms announced by the Department since October 1, 2001, are being undertaken;

(2) The effectiveness and results of reforms initiated by the Department since October 1, 2001;

(3) Necessary or useful reforms that are not occurring or are occurring too slowly;

(4) Legislative, administrative, or operational impediments to the implementation of reforms which are being, or should be, undertaken by the Department;

(5) Procedures to ensure that the Department expends federal grants funds in a timely and efficient manner and in conformity with federal regulations;

(6) Procedures to ensure that each grant of funds from the Department is tied to specific, measurable, and verifiable performance goals;

(7) Procedures to improve the Department's monitoring of the use of its funds in order to ensure that:

(A) The funds are used only for the intended purposes;

(B) The funds are used efficiently; and

(C) The use of the funds brings about the intended results, as set forth in the performance goals;

(8) Procedures to ensure grantee compliance with performance goals; and

(9) The impact of personnel procedures on the operations of the Department.

(d) In making recommendations under subsections (a) and (c) of this section, the Commission shall review best practices in other jurisdictions.

(e) The Commission shall not supersede the Consolidated Plan review and development process or the provisions of subchapter I of this chapter.

(f) Within 150 days after the first meeting of the Commission, the Commission shall issue a final report setting forth its recommendations pursuant to this section. The Commission may issue interim reports at the discretion of the Commission. The Commission shall transmit a copy of each report to the Mayor, the Chairman of the Council, and the chairperson of the Council Committee on Economic Development, and the Director.

(Oct. 1, 2002, D.C. Law 14-190, § 1143, 49 DCR 6968.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Housing and Community Development Reform Advisory Commission Extension Temporary Amendment Act of 2004 (D.C. Law 15-236, March 16, 2005, law notification 52 DCR 3562).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2 of Housing and Community Development Reform Advisory Commission Extension Emergency

Amendment Act of 2004 (D.C. Act 15-542, October 12, 2004, 51 DCR 9833).

For temporary (90 day) amendment of section, see § 2 of Housing and Community Development Reform Advisory Commission Extension Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-5, January 19, 2005, 52 DCR 2681).

Legislative history of Law 14-190. — For Law 14-190, see notes following § 6-1031.

§ 6-1034. Authorities and resources of the Commission.

(a) The Mayor shall provide reasonable administrative and technical support, meeting space, and office supplies requested by the Commission to carry out its responsibilities under this subchapter.

(b) The Commission may request from any department, agency, or instrumentality of the District government any information necessary to carry out its responsibilities under this subchapter. Every department, agency, and instrumentality shall cooperate with the Commission and provide, in a timely and complete manner, any information that the Commission requests pursuant to this subsection.

(c) The Commission may enter into a contract with a government entity,

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private entity, or other organization or individual to conduct research or surveys, prepare reports, or perform other activities useful to the discharge of the responsibilities of the Commission under this subchapter.

(d) The Commission may establish any advisory groups, committees, or subcommittees, consisting of members or nonmembers of this Commission, as it deems appropriate to carry out its responsibilities under this subchapter.

(Oct. 1, 2002, D.C. Law 14-190, § 1144, 49 DCR 6968.)

Legislative history of Law 14-190. — For Law 14-190, see notes following § 6-1031. Housing and Community Development pursuant to D.C. Law 14-90, see Mayor's Order

Delegation of Authority. — Delegation of Authority to the Director of the Department of 2003-171, December 1, 2003 (50 DCR 10617).

§ 6-1035. Procedures of the Commission.

(a) The Director of the Department, or the Director's designee, shall convene the first meeting of the Commission during December 2002; provided, that at least 5 appointments have been made to the Commission.

(b) The Commission shall meet at least once a month, at a time and place to be determined by the Chairperson. The Chairperson may call additional meetings.

(c) A majority of the members shall constitute a quorum.

(d) An audio or written transcript shall be kept of all meetings at which a vote is taken.

(Oct. 1, 2002, D.C. Law 14-190, § 1145, 49 DCR 6968.)

Legislative history of Law 14-190. — For Law 14-190, see notes following § 6-1031.

§ 6-1036. Funding; no compensation for members.

(a) Upon certification of the availability of funds by the Chief Financial Officer, there shall be authorized for expenditure by the Commission, \$200,000 from the Industrial Revenue Bond special account. The Commission may expend other funds as appropriated.

(b) No member of the Commission shall be reimbursed for expenses incurred in the performance of his or her duties under this subchapter nor shall any member be compensated for time expended in the performance of duties under this subchapter.

(Oct. 1, 2002, D.C. Law 14-190, § 1146, 49 DCR 6968.)

Legislative history of Law 14-190. — For Law 14-190, see notes following § 6-1031.

§ 6-1037. Dissolution of Commission.

The Commission shall cease to exist 90 days after the final report required by § 6-1033 is submitted to the Mayor, the Chairman of the Council, the

chairperson of the Council Committee on Economic Development, and the Director.

(Oct. 1, 2002, D.C. Law 14-190, § 1147, 49 DCR 6968.)

Legislative history of Law 14-190. — For Law 14-190, see notes following § 6-1031.

Subchapter II-A. Inclusionary Zoning Implementation.

§ 6-1041.01. Definitions.

For the purposes of this subchapter, the term:

(1) “Housing Production Trust Fund” means the fund established by Chapter 28 of Title 42 [§ 42-2801 et seq.].

(2) “Inclusionary Development” means developments subject to the Inclusionary Zoning Program pursuant to 11 DCMR § 2602.1.

(3) “Inclusionary unit” means a unit set aside for sale or rental to low- and moderate-income households as required by the Inclusionary Zoning Program.

(4) “Inclusionary Zoning Program” means all of the provisions of Chapter 26 of Title 11 of the District of Columbia Municipal Regulations (11 DCMR 2600 et seq.), this subchapter, and the regulations promulgated under the authority of this subchapter.

(5) “Low-income household” means a household of one or more individuals with a total annual income adjusted for household size equal to or less than 50% of the Metropolitan Statistical Area median as certified by the Mayor.

(6) “Moderate-income household” means a household of one or more individuals with a total annual income adjusted for household size equal to between 51% and 80% of the Metropolitan Statistical Area median as certified by the Mayor.

(Mar. 14, 2007, D.C. Law 16-275, § 101, 54 DCR 880.)

Legislative history of Law 16-275. — Law 16-275, the “Inclusionary Zoning Implementation Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-779, which was referred to Committee on the Whole. The Bill was adopted on first and second readings

on December 5, 2006, and December 19, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-632 and transmitted to both Houses of Congress for its review. D.C. Law 16-275 became effective on March 14, 2007.

§ 6-1041.02. Unlawful acts.

(a) No inclusionary unit may be sold or leased to any person not authorized by the Mayor to purchase or rent the unit, except as may be permitted by regulation.

(b) Except as provided in Chapter 26 of Title 11 of the District of Columbia Municipal Regulations, the zoning regulations, no inclusionary unit may be sold or leased for more than the maximum rent or purchase price established by the Mayor pursuant to § 6-1041.03, unless the unit is sold to a land trust or similar entity authorized by regulation to purchase such units for resale at prices specified by the Mayor.

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(c) It shall be unlawful to construct an Inclusionary Development in a manner inconsistent with a Certificate of Inclusionary Zoning Compliance approved by the Mayor pursuant to § 6-1041.05.

(Mar. 14, 2007, D.C. Law 16-275, § 102, 54 DCR 880; Mar. 25, 2009, D.C. Law 17-353, § 161(a), 56 DCR 1117.)

Effect of amendments. — D.C. Law 17-353 validated a previously made technical correction in the section heading.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 6-201.

Legislative history of Law 16-275. — For Law 16-275, see notes following § 6-1041.01.

§ 6-1041.03. Establishment of maximum rent and purchase price; publication requirement.

(a) The Mayor shall establish the maximum rent or purchase price for the first sale of an inclusionary unit based upon either the actual income of the household selected by the Mayor to lease or purchase the unit or based upon a rental and price schedule as follows:

(1) Rents based upon the actual income of a household shall be established so that the household will not expend more than approximately 30% of its annual income on rent and utilities.

(2) Purchase prices based upon the actual income of a household shall be established so that the household will not expend more than approximately 30% of its annual income on mortgage payments, including principal, interest, and property insurance and taxes, home owner association or condominium fees, and utilities.

(3) Maximum rent and purchase prices established through a schedule applicable to low-income households shall be set so that a household earning 50% of the Metropolitan Statistical Area median will expend no more than approximately 30% of its annual income on the applicable housing costs identified in subsections (b) and (c) of this section.

(4) Maximum rent and purchase prices established through a schedule applicable to moderate-income households shall be set so that a household earning 80% of the Metropolitan Statistical Area median will expend no more than approximately 30% of its annual income on the applicable housing costs identified in subsections (b) and (c) of this section.

(b) The initial rental and prices schedule shall be published in the District of Columbia Register. The schedule may be modified as necessary to maintain the affordability of inclusionary units. The initial and revised schedules need not be offered for public comment through publication of a notice of proposed rulemaking, but shall not become effective until publication in the District of Columbia Register. Each published schedule shall identify the assumptions underlying the prices and rents established, such as the mortgage term and the average interest rate, taxes, insurance, condominium fees used.

(c) Except as provided in subsection (d) the purchase price, for the second and all subsequent sales of an inclusionary unit shall equal not more than the purchase price paid by each seller plus the costs of the improvements

permitted by regulation to be added to the purchase price, which amount shall be either multiplied by the percentage by which the consumer price index has risen or fallen since the date on which that seller purchased the property, or calculated pursuant to another formula as determined and published by the Mayor.

(d) The purchase price for the second and all subsequent sales of an inclusionary unit sold to the Mayor shall equal the purchase price paid by each seller plus the costs of the improvements permitted by regulation to be added to the purchase price, which amount shall be multiplied by 25% or the percentage that the consumer price index has risen or fallen, whichever is lower, since the date on which that seller purchased the property.

(Mar. 14, 2007, D.C. Law 16-275, § 103, 54 DCR 880.)

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(a) of Inclusionary Zoning Implementation Temporary Amendment Act of 2008 (D.C. Law 17-161, May 13, 2008, law notification 55 DCR 5894).

(90 day) amendment of section, see § 2(a) of Inclusionary Zoning Implementation Emergency Amendment Act of 2008 (D.C. Act 17-304, February 22, 2008, 55 DCR 2514).

Legislative history of Law 16-275. — For Law 16-275, see notes following § 6-1041.01.

Emergency legislation. — For temporary

§ 6-1041.04. Enforcement.

(a)(1) A violation of this subchapter or the rules issued under authority of this subchapter shall be a civil infraction for the purposes of Chapter 18 of Title 2 and be grounds for revocation of any building permit and certificate of occupancy for the market rate portions of the Inclusionary Development.

(2) Civil fines, penalties, and fees may be imposed as sanctions for infraction of § 6-1041.02 or any rule promulgated under its authority pursuant to Chapter 18 of Title 2.

(b) In addition to such fines, penalties, and fees as may be established pursuant to subsection (a) of this section, the following fines shall be imposed for violations of § 6-1041.02:

(1) Any person found to have sold a inclusionary unit at a price greater than that permitted by the Mayor shall pay a fine equal to the amount by which the purchase price exceeded the price allowed plus 10%.

(2) Any person found to have rented an inclusionary unit for a rent greater than that permitted by the Mayor shall pay a fine equal the amount by which the rent paid exceeded the rent allowed plus 10%. The fine amount shall continue to be paid until the owner provides proof satisfactory to the Mayor that the rental payment has been reduced to the maximum allowed.

(3) All other violations of the Inclusionary Zoning Program are Class I infractions and subject to the fine schedule set forth at 16 DCMR § 3201.1, as that schedule may be amended.

(c) All fines collected pursuant to this section shall be deposited into the Housing Production Trust Fund.

(d) The Attorney General for the District of Columbia may institute court proceedings to enjoin violations of the Inclusionary Zoning Program.

(e) The District government shall not issue or reissue any license or permit,

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including a building permit or certificate of occupancy, to any applicant for a license or permit if the applicant is the owner of any Inclusionary Development or unit and found, after a hearing, to be in violation of the Inclusionary Zoning Program until such time as the Mayor certifies that the Inclusionary Development or unit is again in compliance.

(Mar. 14, 2007, D.C. Law 16-275, § 104, 54 DCR 880.)

Legislative history of Law 16-275. — For Law 16-275, see notes following § 6-1041.01.

§ 6-1041.05. Certificate of Inclusionary Zoning Compliance.

(a) No building permit shall be issued for an Inclusionary Development unless:

(1) The Mayor receives and approves a Certificate of Inclusionary Zoning Compliance, signed by all owners of the Inclusionary Development, demonstrating that the Inclusionary Development will meet the requirements of the Inclusionary Zoning Program; and

(2) The owner of the Inclusionary Development records a covenant in the land records of the District of Columbia that binds all persons with a property interest in any or all of the Inclusionary Development to construct and reserve the number of inclusionary units indicated on the Certificate of Inclusionary Zoning Compliance, and to sell or rent, as applicable, such units in accordance with the Inclusionary Zoning Program and the Certificate of Inclusionary Zoning Compliance for so long as the development remains in existence. The covenant and certificate shall be made part of all future deeds and leases of inclusionary units and shall contain any other provision required by the Mayor.

(b) A certificate of occupancy shall be required for each inclusionary unit.

(c) No certificate of occupancy for any market rate unit in an Inclusionary Development shall be issued unless the application includes a written statement signed by the Mayor and dated no earlier than 6 months from the date of the application, indicating that the Inclusionary Development is in compliance with the Inclusionary Zoning Program and the Certificate of Inclusionary Zoning Compliance.

(d) The Mayor may, by regulation, require the establishment of an escrow account at the time that a certificate of occupancy is issued for a development permitted by the Board of Zoning Adjustment to satisfy its requirements under the Inclusionary Zoning Program with off-site development. The regulations may provide for the payment of the escrow amount into the Housing Production Trust Fund if the off-site development is not constructed after a certain period of time.

(Mar. 14, 2007, D.C. Law 16-275, § 105, 54 DCR 880.)

Legislative history of Law 16-275. — For Law 16-275, see notes following § 6-1041.01.

§ 6-1041.06. Ineligibility of students.

Notwithstanding § 2-1402.21, a person enrolled as full-time student in a college or university shall not be eligible to apply to rent or purchase an inclusionary unit unless the annual income of his or her parent or guardian would qualify under the eligibility standards established by the Mayor, or unless the student is a part of a household that otherwise qualifies for the inclusionary unit.

(Mar. 14, 2007, D.C. Law 16-275, § 106, 54 DCR 880; Mar. 25, 2009, D.C. Law 17-353, § 161(b), 56 DCR 1117.)

Effect of amendments. — D.C. Law 17-353 validated a previously made technical correction in the section heading.

Legislative history of Law 16-275. — For Law 16-275, see notes following § 6-1041.01.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 6-201.

§ 6-1041.07. Authority and responsibilities of the Mayor.

The Mayor is authorized to undertake all administrative activities to implement the Inclusionary Zoning Program. The activities which the Mayor shall undertake include:

(1) Promulgating regulations needed to implement the Inclusionary Zoning Program, including amendments to Title 12A of the District of Columbia Municipal Regulations;

(2) Establishing the circumstances when the Mayor, the District of Housing Authority, or a 3rd party, including a land trust or a qualified nonprofit organization, may purchase an inclusionary unit for the purpose of reselling it to low- or moderate-income households;

(3) Advertising the existence of the Inclusionary Zoning Program to the general public, including the process to apply for participation;

(4) Accepting applications from households seeking to rent or purchase inclusionary units;

(5) Establishing minimum income requirements;

(6) Evaluating the eligibility of households submitting applications pursuant to paragraph (4), based upon the eligibility criteria established in Chapter 26 of Title 11 of the District of Columbia Municipal Regulations (11 DCMR 2600 et seq.) and other relevant considerations;

(7) Establishing one or more lists of eligible households, such as one for rental and one for home ownership, and a selection process for determining the order in which such households shall be chosen to rent or purchase available inclusionary units, including the establishment of preference points for residents of the District of Columbia, eligible households in which at least one member works in the District of Columbia, and the length of time that households have been on the wait list;

(8) Establishing the process by which the owners of Inclusionary Developments or units shall notify the Mayor of the availability of inclusionary units;

(9) Determining the circumstances under which owners of Inclusionary

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Developments or units may sell or rent inclusionary units to low- or moderate-income households that have not been selected by the Mayor;

(10) Establishing minimum size and other standards for inclusionary units;

(11) Determining the circumstances under which an owner or renter of an inclusionary unit may temporarily lease the unit;

(12) Establishing the process by which renters of inclusionary units shall be required to periodically certify their continuing eligibility for occupancy and, if no longer eligible, the means by which their leaseholds shall be terminated and their units made available to eligible households; and

(13) Establishing a fee for the review of Certificates of Inclusionary Zoning Compliance submitted in accordance with § 6-1041.04; provided, that the fee shall not exceed the costs of reviewing the certificates and enforcing compliance with the program.

(Mar. 14, 2007, D.C. Law 16-275, § 107, 54 DCR 880; Mar. 25, 2009, D.C. Law 17-353, § 161(c), 56 DCR 1117.)

Effect of amendments. — D.C. Law 17-353 validated a previously made technical correction in the section heading.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(b) of Inclusionary Zoning Implementation Temporary Amendment Act of 2008 (D.C. Law 17-161, May 13, 2008, law notification 55 DCR 5894).

Section 2 of D.C. Law 17-311 added subsec. (c) to read as follows:

“(c)(1) No later than February 6, 2009, the Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.), shall issue and publish a Notice of Final Rulemaking containing all regulations necessary for implementation of this act, as required by this section, including the maximum rent and purchase price schedule required by section 103.

“(2) The final rulemaking required by this subsection shall contain an effective date that is no later than 60 days after the date of publication in the District of Columbia Register of the Notice of Final Rulemaking.”.

Section 4(b) of D.C. Law 17-311 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(b) of Inclusionary Zoning Implementation Emergency Amendment Act of 2008 (D.C. Act 17-304, February 22, 2008, 55 DCR 2514).

For temporary (90 day) amendment of section, see § 2 of Inclusionary Zoning Regulations Emergency Amendment Act of 2008 (D.C. Act 17-571, November 6, 2008, 55 DCR 12116).

For temporary (90 day) amendment of section, see § 2 of Inclusionary Zoning Final Rulemaking Emergency Amendment Act of 2008 (D.C. Act 17-574, December 8, 2008, 55 DCR 12615).

For temporary (90 day) amendment of section, see § 2 of Inclusionary Zoning Final Rulemaking Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-12, February 23, 2009, 56 DCR 1918).

Legislative history of Law 16-275. — For Law 16-275, see notes following § 6-1041.01.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 6-201.

Delegation of Authority. — Delegation of Authority—Inclusionary Zoning Implementation Act of 2006, see Mayor's Order 2008-59, April 2, 2008 (55 DCR 5510).

§ 6-1041.08. Agency responsibilities.

(a)(1) The District of Columbia Housing Authority (“DCHA”) shall perform all the functions and duties under the Inclusionary Zoning Program as may be delegated to it by the Mayor.

(2) Nothing in this section shall be construed as preventing the Mayor from delegating any or all of such functions to a subordinate agency.

(b) Notwithstanding Reorganization Plan No. 3 of 1983 [part C, subchapter

VI, Chapter 15 of Title 1], effective March 31, 1983, the functions of the Department of Consumer and Regulatory Affairs shall not include any of the functions given to the Mayor under this subchapter, except the functions as may be delegated to it by the Mayor.

(Mar. 14, 2007, D.C. Law 16-275, § 108, 54 DCR 880.)

Legislative history of Law 16-275. — For Law 16-275, see notes following § 6-1041.01.

§ 6-1041.09. Annual reports.

(a) Beginning on the first anniversary of March 14, 2007, and each year thereafter, the Mayor shall submit a report to the Council and the Zoning Commission, providing:

(1) The number of inclusionary units produced at each targeted income level;

(2) The number of inclusionary units produced for sale;

(3) The number of inclusionary units produced for rent;

(4) The median income of the households that purchased or rented inclusionary units;

(5) The number of inclusionary units purchased or rented by DCHA, other District agency, and 3rd parties, for resale to low- or moderate-income households;

(6) The value of the subsidy, if any, contributed toward the rental or purchase of units by DCHA, other District agency, or 3rd party to make them affordable to low- or moderate-income households;

(7) The average rent and sales prices for inclusionary units based on number of bedrooms;

(8) The numbers of waivers or alternative compliance requested and granted;

(9) An analysis of how much bonus density was actually achieved for each development in which inclusionary units were required; and

(10) An assessment of whether the Inclusionary Zoning Program has had any adverse effect on the production of housing or on the value of land in the District, and, if a substantial adverse effect on housing production has been found, whether additional regulatory or legislative incentives or programs should be adopted by the District to mitigate against such adverse effect, and whether changes in the Inclusionary Zoning Program should be considered by the Zoning Commission, such as:

(A) Increasing the allowable bonus density or height of developments where inclusionary units are required;

(B) Increasing the minimum threshold of the number of housing units in a development that triggers the application of the Inclusionary Zoning Program;

(C) Reducing the amount of required affordable housing;

(D) Reducing the minimum set-aside requirements on matter-of-right densities; or

(E) Changing the income levels of the targeted households for inclusionary units.

(b)(1) No later than 5½ years after March 14, 2007, the Mayor shall submit a report to the Council that lists the initial purchase price of each inclusionary unit sold during the 5-year period subsequent to March 14, 2007, and, for each unit resold, the percentage by which the purchase price exceeded the previous purchase price.

(2) The report shall also include a recommendation on how best to ensure a baseline rate of return for inclusionary unit owners upon resale while maintaining the continued affordability inclusionary units.

(Mar. 14, 2007, D.C. Law 16-275, § 109, 54 DCR 880.)

Legislative history of Law 16-275. — For Law 16-275, see notes following § 6-1041.01.

Subchapter III. Comprehensive Housing Strategy Task Force.

§ 6-1051. Establishment of Comprehensive Housing Strategy Task Force; composition.

(a) There is hereby established a Comprehensive Housing Strategy Task Force (“Task Force”).

(b) The Task Force shall be comprised of not fewer than 23 members and not more than 30 members, including the following:

(1) At least one representative from banking or financial services institutions;

(2) At least 2 representatives from the for-profit housing production community;

(3) At least 2 representatives from the nonprofit housing production community, at least one of whom has experience developing special needs housing;

(4) At least one expert in housing policy from the academic or nonprofit community;

(5) At least one representative from the philanthropic community;

(6) At least one representative from an employer-assisted housing provider;

(7) At least 2 representatives from the multifamily property owner community;

(8) At least one representative from the residential real estate profession;

(9) At least one representative from an organization that advocates for the production, preservation, and rehabilitation of affordable housing for lower-income households;

(10) At least one representative of low-income tenants;

(11) At least 2 citizen representatives;

(12) At least one representative from an organization that provides supportive housing services including housing counseling, financial management, in-kind assistance, or legal representation; and

(13) No more than 6 representatives from government agencies, including independent housing agencies.

(c) The members of the Task Force shall be appointed by the Mayor with the advice and consent of the Council. The Mayor shall transmit to the Council by September 30, 2003, proposed resolutions to approve the appointment of each member of the Task Force for a 45-day period of review, excluding days of Council recess. If the Council does not approve or disapprove a resolution within the 45-day period, the resolution shall be deemed approved.

(d) The Mayor shall designate a chair or co-chairs from among the non-governmental members of the Task Force.

(March 10, 2004, D.C. Law 15-73, § 2, 50 DCR 10909.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 2 of Comprehensive Housing Strategy Temporary Act of 2003 (D.C. Law 15-52, December 9, 2003, law notification 51 DCR 1787).

Emergency legislation. — For temporary (90 day) addition, see § 2 of Comprehensive Housing Strategy Emergency Act of 2003 (D.C. Act 15-143, July 29, 2003, 50 DCR 6888).

For temporary (90 day) addition, see § 2 of Comprehensive Housing Strategy Congressional Review Emergency Act of 2003 (D.C. Act 15-215, November 7, 2003, 50 DCR 10023).

Legislative history of Law 15-73. — Law 15-73, the “Comprehensive Housing Strategy Act of 2003”, was introduced in Council and assigned Bill No. 15-41, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on October 7, 2003, and November 4, 2003, respectively. Signed by the Mayor on November 25, 2003, it was assigned Act No. 15-238 and transmitted to both Houses of Congress for its review. D.C. Law 15-73 became effective on March 10, 2004.

§ 6-1052. Development of the comprehensive housing strategy.

(a) The Task Force shall consider the following goals and policy objectives when developing the Comprehensive Housing Strategy:

- (1) Preserving and creating mixed-income neighborhoods;
- (2) Assessing and improving the quality, availability, and affordability of rental housing for households at all income levels, including the impact of regulatory and other factors on the provision of quality rental housing;
- (3) Assessing and increasing homeownership opportunities for households at all income levels;
- (4) Preventing the involuntary displacement of long-term residents;
- (5) Assessing the quality and availability of housing options for special populations, such as seniors, individuals with physical or mental disabilities, and individuals who were formerly homeless;
- (6) Assessing and improving the quality and availability of workforce housing; and
- (7) Increasing the District of Columbia’s population by 100,000 residents by the year 2013.

(b) For the purposes of subsection (a) of this section “affordability” means housing for which monthly costs, including utilities, consume no more than 30% of the household’s monthly income.

(c) The Comprehensive Housing Strategy shall include:

- (1) The Task Force’s findings;
- (2) Housing production goals for each of the 10 succeeding years;

(3) A 10-year implementation timetable;

(4) Public policy recommendations designed to help meet the housing production and preservation goals; and

(5) An estimate of the public and private funding required to achieve the identified housing production and preservation goals.

(March 10, 2004, D.C. Law 15-73, § 3, 50 DCR 10909.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 3 of Comprehensive Housing Strategy Temporary Act of 2003 (D.C. Law 15-52, December 9, 2003, law notification 51 DCR 1787).

Emergency legislation. — For temporary (90 day) addition, see § 3 of Comprehensive Housing Strategy Emergency Act of 2003 (D.C. Act 15-143, July 29, 2003, 50 DCR 6888).

For temporary (90 day) addition, see § 3 of Comprehensive Housing Strategy Congressional Review Emergency Act of 2003 (D.C. Act 15-215, November 7, 2003, 50 DCR 10023).

Legislative history of Law 15-73. — For Law 15-73, see notes following § 6-1051.

§ 6-1053. Presentation of Comprehensive Housing Strategy; public meetings.

(a) Within 12 months after the Council's confirmation of the Mayor's nominations to the Task Force, the Task Force shall present the Comprehensive Housing Strategy to the Council and the Mayor.

(b) The Task Force shall hold at least 2 public meetings, which shall be convened at the following times:

(1) Within 60 days after the Council's confirmation of the Task Force members; and

(2) After a draft of the Comprehensive Housing Strategy has been developed but prior to presenting the final Comprehensive Housing Strategy to the Council and the Mayor under section (a) of this section.

(c) At least 30 days before a public meeting, the Task Force shall provide the general public the following information regarding the meeting, the:

(1) Time;

(2) Date; and

(3) Location.

(d) The Task Force shall provide all interested persons a reasonable opportunity to be heard at the public meetings.

(March 10, 2004, D.C. Law 15-73, § 4, 50 DCR 10909.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 4 of Comprehensive Housing Strategy Temporary Act of 2003 (D.C. Law 15-52, December 9, 2003, law notification 51 DCR 1787).

Emergency legislation. — For temporary (90 day) addition, see § 4 of Comprehensive Housing Strategy Emergency Act of 2003 (D.C. Act 15-143, July 29, 2003, 50 DCR 6888).

For temporary (90 day) addition, see § 4 of Comprehensive Housing Strategy Congressional Review Emergency Act of 2003 (D.C. Act 15-215, November 7, 2003, 50 DCR 10023).

Legislative history of Law 15-73. — For Law 15-73, see notes following § 6-1051.

§ 6-1054. Reporting and updating requirements; annual report.

(a) The Mayor shall report to the Council regarding the implementation of the Comprehensive Housing Strategy on an annual basis.

(b) The Mayor shall appoint a task force to update the Comprehensive Housing Strategy no later than 5 years after the Task Force presents a Comprehensive Housing Strategy to the Council and the Mayor under § 6-1053(a).

(c)(1) No later than 120 days after June 29, 2011, the Mayor shall submit to the Council a Comprehensive Housing Strategy for the District, separate from the Comprehensive Housing Strategy required by § 6-1053. The Comprehensive Housing Strategy shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the Comprehensive Housing Strategy, by resolution, within the 45-day review period, the Comprehensive Housing Strategy shall be deemed approved.

(2) In developing the Comprehensive Housing Strategy, the Mayor shall:

(A) Consider the updated recommendations of the task force established pursuant to subsection (b) of this section;

(B) Address the criteria set forth in § 6-1052(c); and

(C) Include budgetary analyses demonstrating how the Comprehensive Housing Strategy will affect current and future financial plans, including an analysis of the long-term impact on the District's affordable housing programs from the annual use of \$18 million from the Housing Production Trust Fund, established by § 42-2802, to support the Rent Supplement Program.

(March 10, 2004, D.C. Law 15-73, § 5, 50 DCR 10909; Sept. 14, 2011, D.C. Law 19-21, § 2052, 58 DCR 6226.)

Effect of amendments. — D.C. Law 19-21 added subsec. (c).

Temporary Addition of Section. — For temporary (225 day) addition, see § 5 of Comprehensive Housing Strategy Temporary Act of 2003 (D.C. Law 15-52, December 9, 2003, law notification 51 DCR 1787).

Emergency legislation. — For temporary (90 day) addition, see § 5 of Comprehensive Housing Strategy Emergency Act of 2003 (D.C. Act 15-143, July 29, 2003, 50 DCR 6888).

For temporary (90 day) addition, see § 5 of Comprehensive Housing Strategy Congressional Review Emergency Act of 2003 (D.C. Act 15-215, November 7, 2003, 50 DCR 10023).

For temporary (90 day) amendment of section, see § 2002 of Fiscal Year 2012 Budget Support Emergency Act of 2011 (D.C. Act 19-93, June 29, 2011, 58 DCR 5599).

Legislative history of Law 15-73. — For Law 15-73, see notes following § 6-1051.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 6-226.

Short title. — Short title: Section 2051 of D.C. Law 19-21 provided that subtitle F of title II of the act may be cited as "Comprehensive Housing Strategy Amendment Act of 2011".

Subchapter III-A. Workforce Housing Production Program.

PART A.

WORKFORCE HOUSING LAND TRUST DESIGN AND
IMPLEMENTATION PLAN APPROVED.

§ 6-1061.01. Findings.

(a) The District of Columbia faces a severe shortage of affordable housing. Recent increases in housing prices have far outpaced the growth in wages and salaries of many workers. District government employees have not been immune from these pressures. Only 37% of the District government workforce earning more than \$40,000 resides in the District.

(b) The Washington region's growth in housing prices has outpaced most other metropolitan areas in the country. It ranks 2nd in house price increases for the 3-year period between 2002 and 2005. In July 2005, the District of Columbia had the highest average sales price in the region at about \$543,700, which was higher than the richer surrounding jurisdictions of northern Virginia and suburban Maryland.

(c) The Mayor and the Council established the Comprehensive Housing Strategy Task Force in 2003 to help the city respond to the critical housing problems created by the housing boom.

(d) The Comprehensive Housing Strategy Task Force report of 2006 recommended a specific tool for solving the growing workforce housing problem. The report recommended the formation of one or more community land trusts run by public, nonprofit, or other community-based entities whose mission would be to acquire land and hold it long-term while providing long-term leases to developers of housing for both rental and for-sale units. This approach advances the important objective of creating 'permanent affordability' or guaranteeing that units remain affordable indefinitely.

(e) The Deed Transfer and Recordation Emergency Amendment Act of 2006, effective August 8, 2006 (D.C. Act 16-477; 53 DCR 7068) ("emergency act") [see now D.C. Law 16-192, § 2052; D.C. Code § 42-2855.01] established the Mayor's Comprehensive Housing Task Force Fund. For fiscal year 2007 only, an amount of \$5 million was allocated for the production of workforce housing; provided, that eligibility for purchase or rental of workforce housing shall be limited to households with incomes not exceeding 120% of the area median income as defined in § 42-2801(1) ("AMI"); and, provided further, that all housing units developed with funds from the Fund shall be leased or sold on to eligible households for the life of the unit. The emergency act required the Mayor to submit to the Council, for review, a workforce housing development plan.

(f) The Office of the Deputy Mayor for Planning and Economic Development ("ODMPED") initiated work on the development plan beginning in July 2006.

(g) The District of Columbia Workforce Housing Land Trust Design and Implementation Plan ("Plan") is the product of a collaborative effort between

the District government, private lenders, nonprofit housing advocates, and for-profit and nonprofit developers. The Plan was submitted by the Mayor to the Council for approval as required by the emergency act [§ 42-2855.01(b)(1)(C)].

(h) The Plan recommends the formation of a nonprofit community land trust that will provide high leverage for subsidy dollars and create permanent affordability in 10,000 housing units in Washington, D.C., beginning with a 1,000-unit pilot program financed in part with New Markets Tax Credits.

(i) The land trust is designed to maximize unit production; leverage public and private resources; provide permanent affordability; ensure flexibility and portability; promote wealth building; and ensure efficient administration.

(j) Once approved, the Plan will efficiently support the New Communities and Great Streets Initiatives as well as instrumentalities such as the Anacostia Waterfront Corporation and the National Capital Revitalization Corporation in achieving affordable housing development objectives.

(Mar. 14, 2007, D.C. Law 16-278, § 101, 54 DCR 895.)

Emergency legislation. — For temporary (90 day) provisions, see § 2142 of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

Legislative history of Law 16-278. — Law 16-278, the “Workforce Housing Production Program Approval Act of 2006”, was introduced in Council and assigned Bill No. 16-812, which was referred to Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 5, 2006, and December 19, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-635 and transmitted to both Houses of Congress for its review. D.C. Law 16-278 became effective on March 14, 2007.

Short title. — Short title: Section 2141 of D.C. Law 17-20 provided that subtitle N of title II of the act may be cited as the “Workforce Development Plan Conceptual Submission Act of 2007”.

Delegation of Authority. — Delegation of authority to Title I of the Workforce Housing Production Program Approval Act of 2006, see Mayor’s Order 2007-180, August 3, 2007 (54 DCR 11614).

Delegation of Authority to the Director of the Department of Housing and Community Development under Title I of the Workforce Housing Production Program Approval Act of 2006, see Mayor’s Order 2009-168, September 30, 2009 (56 DCR 8101).

Editor’s notes. — Section 2142 of D.C. Law 17-20 provided: “No later than November 1, 2007, the Deputy Mayor for Planning and Economic Development shall submit to the Council conceptual development plans for the redevelopment of 2 surplus District properties as affordable workforce housing targeting District of Columbia public school and public charter school teachers. The plans for the sites shall not include the fee simple sale of the land to non-governmental entities.”

§ 6-1061.02. Establishment of land trust and pilot program.

(a) A nonprofit community land trust shall be formed pursuant to the Plan recommendation.

(b) The Office of the Deputy Mayor for Planning and Economic Development shall issue a request for proposal inviting organizations which are tax-exempt pursuant to section 501(c)(3) of the Internal Revenue Code of 1986, approved August 6, 1954 (68A Stat. 163; 26 U.S.C. § 501(c)(3)), to submit proposals for development and administration of the nonprofit community land trust consistent with this part and rules promulgated pursuant to this part.

(c) The land trust shall develop a pilot program to develop 1,000 units of workforce housing within 3 years of March 14, 2007.

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(d)(1) The land trust shall develop units affordable to households not to exceed 120% of AMI.

(2) The land trust's portfolio shall have an average not to exceed 80% of AMI.

(3) The 80% portfolio average requirement shall be evaluated for compliance on an annual basis, beginning 12 months after March 14, 2007.

(e) The land trust shall offer the qualified housing units for sale to prospective buyers pursuant to procedures developed by the land trust and based upon the following priority list in the following order:

- (1) Employees of the District of Columbia and its instrumentalities;
- (2) District residents who are first-time homebuyers;
- (3) Other District residents; and
- (4) The general public.

(f)(1) The Mayor may take any action reasonably necessary or appropriate in accordance with this part in connection with the preparation, execution, and issuance of a trust instrument to be entered into by the District and a trustee to be selected by the Mayor pursuant to the process as established in subsection (a) of this section.

(2) The trust instrument shall govern the expenditure of funds authorized under this part and shall set forth the terms and conditions precedent to such expenditure, including evidence of firm funding commitments of private equity and debt.

(g)(1) The Office of the Deputy Mayor for Planning and Economic Development shall aggressively market the pilot program to employees of the District government and shall be responsible for:

(A) Maintaining a wait list of prospective District employee and District instrumentality employee buyers of workforce housing units being developed with District government funds, or on District government land;

(B) Providing the Council with quarterly reports that detail:

(i) The number of people on the wait list by household income and whether a person is employed at a district government department, independent agency, or instrumentality; and

(ii) The location, price, and expected delivery date of workforce housing units currently being developed with District government funds or on District land; and

(C) Notifying persons on the wait list of when units are available for purchase or rent.

(2) The wait list may include non-District government employees; and

(3) The Mayor may utilize his discretion in the prioritization of persons on the wait list.

(g-1) The Deputy Mayor for Planning and Economic Development shall conduct a survey of employees of the District government and its instrumentalities to assess the demand for workforce housing, rental and ownership, in the District of Columbia among these employees. The Deputy Mayor for Planning and Economic Development shall submit the results of the survey to the Council no later than December 31, 2007.

(h) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, may issue rules to implement the provisions of this part.

(i) Within 60 days after the close of each fiscal year, as established by the land trust, the land trust shall submit a report to the Mayor and the Council on the status of the workforce housing pilot program and the Housing Production Trust Fund, established pursuant to § 42-2802. At the conclusion of the pilot program, or within 3 years after March 14, 2007, whichever is sooner, the Mayor shall submit a final report of the pilot program, which report shall include recommendations for a permanent workforce housing program.

(j) For the purposes of this section, the term “household” means all the persons who occupy a housing unit, whose occupants may be a single family, one person living alone, 2 or more families living together, or any other group of related or unrelated persons who share living arrangements.

(k)(1) The land trust shall require that all units developed under the program remain perpetually affordable.

(2) To guarantee permanent affordability, the land trust may:

(A) Utilize the long-term affordability approach outlined in the Plan,

(B) Base future price increases and return to sellers on an annual inflator index; or

(C) Any other method designed to assure permanent affordability consistent with this part.

(3) District funds provided to the land trust shall be redistributed as loans payable to the land trust in a manner determined by the land trust.

(l) Funds authorized for fiscal year 2007 shall be committed prior to October 1, 2007.

(Mar. 14, 2007, D.C. Law 16-278, § 102, 54 DCR 895; Sept. 18, 2007, D.C. Law 17-20, § 2112, 54 DCR 7052; Dec. 24, 2008, D.C. Law 17-285, § 2(a), 55 DCR 11986; Mar. 25, 2009, D.C. Law 17-353, § 163, 56 DCR 1117.)

Effect of amendments. — D.C. Law 17-20 rewrote subsec. (f) and added subsec. (f-1).

D.C. Law 17-285 rewrote subsec. (g); and, in subsec. (i), substituted “Within 60 days after the close of each fiscal year, as established by the land trust, the land trust shall submit a report to the Mayor and the Council on the status of the workforce housing pilot program and the Housing Production Trust Fund, established pursuant to § 42-2802.” for “Within one year after March 14, 2007, the Mayor shall submit a report to the Council on the status of the workforce housing pilot program.” Prior to amendment, subsec. (g) read as follows: “(g) The Office of the Deputy Mayor for Planning and Economic Development shall aggressively market the pilot program to employees of the District government.”

D.C. Law 17-353 validated previously made technical corrections that redesignated the former second subsec. (b) as subsec. (c) and redesignated former subsecs. (c) to (k) as subsecs. (d) to (l).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(a) of Workforce Housing Production

Program Temporary Amendment Act of 2007 (D.C. Law 17-44, November 24, 2007, law notification 55 DCR 3).

Section 2(a) of D.C. Law 17-244 amended subsec. (g) to read as follows:

“(g) The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.), may issue rules to implement the provisions of this title.”; and, in subsec. (h), substituted “Within 60 days after the close of each fiscal year, as such fiscal year is established by the land trust, the land trust shall submit a report to the Mayor and the Council on the status of the workforce housing pilot program and the use of funds from the Housing Production Trust Fund, established pursuant to section 3 of the Housing Production Trust Fund Act of 1988, effective March 16, 1989 (D.C. Law 7-202; D.C. Official Code § 42-2802).” for “Within one year after the effective date of this title, the Mayor shall submit a report to the Council on the status of the workforce housing pilot program.”

Section 5(b) of D.C. Law 17-244 provided that the act shall expire after 225 days of its having taken effect.

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Emergency legislation. — For temporary (90 day) amendment of section, see § 2112 of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

For temporary (90 day) amendment of section, see § 2(a) of Workforce Housing Production Program Emergency Amendment Act of 2007 (D.C. Act 17-104, July 27, 2007, 54 DCR 8212).

For temporary (90 day) amendment of section, see § 2(a) of Workforce Housing Production Program Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-201, November 26, 2007, 54 DCR 11903).

For temporary (90 day) amendment of section, see § 2(a) of Workforce Housing Production Program Emergency Amendment Act of 2008 (D.C. Act 17-440, July 16, 2008, 55 DCR 8290).

Legislative history of Law 16-278. — For Law 16-278, see notes following § 6-1061.01.

Legislative history of Law 17-20. — Law 17-20, the “Fiscal Year 2008 Budget Support Act of 2007”, was introduced in Council and assigned Bill No. 17-148 which was referred to

the Committee of the Whole. The Bill was adopted on first and second readings on May 15, 2007, and June 5, 2007, respectively. Signed by the Mayor on June 28, 2007, it was assigned Act No. 17-63 and transmitted to both Houses of Congress for its review. D.C. Law 17-20 became effective on September 18, 2007.

Legislative history of Law 17-285. — Law 17-285, the “Workforce Housing Production Program Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-279 which was referred to the Committee on Housing and Urban Affairs. The Bill was adopted on first and second readings on July 1, 2008, and October 7, 2008, respectively. Signed by the Mayor on October 27, 2008, it was assigned Act No. 17-551 and transmitted to both Houses of Congress for its review. D.C. Law 17-285 became effective on December 24, 2008.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 6-201.

Short title. — Short title: Section 2111 of D.C. Law 17-20 provided that subtitle L of title II of the act may be cited as the “Centralized Affordable Workforce Housing Unit Amendment Act of 2007”.

§ 6-1061.03. Approval of the Plan.

The Plan, as amended by this part, is approved.

(Mar. 14, 2007, D.C. Law 16-278, § 103, 54 DCR 895.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 2(b) of Workforce Housing Production Program Temporary Amendment Act of 2007 (D.C. Law 17-44, November 24, 2007, law notification 55 DCR 3).

Section 2(b) of D.C. Law 17-244 added a section to read as follows:

“Sec. 104. Authority to transfer moneys to the workforce housing pilot program from the Housing Production Trust Fund and the Industrial Revenue Bond special account.

“(a) The Mayor may transfer \$4 million from the Housing Production Trust Fund to such accounts or sub-accounts as may be established pursuant to the trust agreement to be entered into pursuant to section 102(e).

“(b)(1) The Mayor may transfer \$1 million from the Industrial Revenue Bond special account established under D.C. Official Code § 47-131(c)(4) to such accounts or sub-accounts as may be established pursuant to the trust agreement to be entered into pursuant to section 102(e).

“(2) The funds transferred pursuant to this subsection may be used to assist households whose annual incomes do not exceed 120% of the area median income; provided, that the

annual incomes of the households assisted through an allocation or proceeds from the Housing Production Trust Fund, established pursuant to section 3 of the Housing Production Trust Fund Act of 1988, effective March 16, 1989 (D.C. Law 7-202; D.C. Official Code § 42-2802), shall not exceed 80% of the area median income.

“(3) For the purposes of this subsection, the term “area median income” shall have the same meaning as provided in section 2(1) of the Housing Production Trust Fund Act of 1988, effective March 16, 1989 (D.C. Law 7-202; D.C. Official Code § 42-2801(1)).”.

Section 5(b) of D.C. Law 17-244 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition, see § 2(b) of Workforce Housing Production Program Emergency Amendment Act of 2007 (D.C. Act 17-104, July 27, 2007, 54 DCR 8212).

For temporary (90 day) addition, see § 2(b) of Workforce Housing Production Program Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-201, November 26, 2007, 54 DCR 11903).

For temporary (90 day) addition, see § 2(b) of Workforce Housing Production Program Emer-

agency Amendment Act of 2008 (D.C. Act 17-440, July 16, 2008, 55 DCR 8290).

Legislative history of Law 16-278. — For Law 16-278, see notes following § 6-1061.01.

§ 6-1061.04. Authority to transfer moneys from the Housing Production Trust Fund and the industrial revenue bond special account.

(a) The Mayor may make a one-time transfer of \$4 million from the Housing Production Trust Fund to such accounts or sub-accounts as may be established pursuant to the trust agreement to be entered into pursuant to 6-1061.02(e) [now (f)].

(b)(1) The Mayor may make a one-time transfer of \$1 million from the industrial revenue bond special account established under § 47-131(c)(4) to such accounts or sub-accounts as may be established pursuant to the trust agreement to be entered into pursuant to 6-1061.02(e) [now (f)]. The funds transferred pursuant to this subsection may be used to assist eligible households whose annual incomes do not exceed 120% of the area median income.

(2) For the purposes of this subsection, the terms “area median income” and “eligible households” shall have the same meanings as provided in § 42-2801.

(Mar. 14, 2007, D.C. Law 16-278, § 104, as added Dec. 24, 2008, D.C. Law 17-285, § 2(b), 55 DCR 11986.)

Legislative history of Law 17-285. — For Law 17-285, see notes following § 6-1061.02.

PART B.

NEW TOWN AT CAPITAL CITY MARKET DEVELOPMENT.

§ 6-1062.01. Short title.

This part may be cited as the “New Town at Capital City Market Revitalization Development and Public/Private Partnership Act of 2006”.

(Mar. 14, 2007, D.C. Law 16-278, § 201, 54 DCR 895.)

Legislative history of Law 16-278. — For Law 16-278, see notes following § 6-1061.01.

§ 6-1062.02. Definitions.

For the purposes of this part, the term:

(1) “Capital City Market” or “Market” means the approximately 24-acre site bounded by Florida Avenue on the south, 5th Street on the east, Penn Street on the north, and the railroad tracks and Metro rail on the west in northeast Washington, D.C., in Ward 5.

(2) “Chief Financial Officer” means the Chief Financial Officer of the District of Columbia.

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(3) “Developer” means the New Town Development, LLC, a District of Columbia limited liability company.

(4) “DHCD” means the Department of Housing and Community Development.

(5) “Partnership” means the public/private partnership between the District and Developer to revitalize and develop the Capital City Market into a mixed-use, urban residential, retail, restaurants, entertainment, support facilities, office, government facilities, above and below-grade parking community; to create a substantial amount of workforce housing for teachers, policemen, firemen, and other District of Columbia residents; to preserve specific historic buildings; and to maintain the Market’s historic retail and wholesale functions on the existing site in northeast Washington, D.C.

(6) “Revitalization Initiative and Development Plan” means the Initial Conceptual Plan for New Town at the Capital City Market: “A Neighborhood Revitalization Initiative and Development Plan”.

(7) “Washington Beef Properties” means Parcel 129/32 and lots 5, 800, and 802 in square 3587.

(8) “Workforce housing” means housing units set aside for eligible renters or purchasers as defined by the appropriate agency of the District of Columbia and who are at 50% to 120% of the Area Median Income.

(Mar. 14, 2007, D.C. Law 16-278, § 202, 54 DCR 895; Mar. 20, 2009, D.C. Law 17-292, § 2, 55 DCR 12627.)

Effect of amendments. — D.C. Law 17-292, in par. (1), substituted ‘Capital City Market’ or ‘Market’ means the approximately 24-acre site bounded by Florida Avenue on the south, 5th Street on the east, Penn Street on the north, and the railroad tracks and Metro rail on the west in northeast Washington, D.C., in Ward 5” for ‘Capital City Market or ‘Market’ means the approximately 24-acre site bounded by Florida Avenue, N. E., on the south, 6th Street, N.E., on the east, Penn Street, N.E., on the north, and the railroad tracks and Metro rail on the west in northeast Washington, D.C., in Ward 5”.

Legislative history of Law 16-278. — For Law 16-278, see notes following § 6-1061.01.

Legislative history of Law 17-292. — Law 17-292, the “New Town Boundary Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-931 which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on October 7, 2008, and November 18, 2008, respectively. Signed by the Mayor on December 8, 2008, it was assigned Act No. 17-579 and transmitted to both Houses of Congress for its review. D.C. Law 17-292 became effective on March 20, 2009.

§ 6-1062.03. Findings.

(a) The Revitalization and Development Plan presented by the Developer can be used as a model for developing large tracts of underutilized land to create workforce housing, needed community facilities and services, and jobs, and to increase the District’s tax base.

(b) The Market was originally located on the National Mall where the Federal Triangle Complex now exists and was relocated to its present site shortly after World War I upon passage of the Union Station Act of 1910 and adoption of the MacMillan Plan for the Mall.

(c) While the Market has an active retail and wholesale business of local, national, and international food and meat products, the Market now is an underutilized resource of its neighborhood and the city.

(d) The Market has deteriorated and has deteriorating structures, defective and inadequate street layout, excessive vacant land, vacant buildings, unsanitary and unsafe conditions, diversity of ownership, and is becoming an attractive place for criminal activity and homeless inhabitants.

(e) The Market is located less than 350 yards from the new Metro entrance of New York/Florida Avenues Metro station.

(f) The Market's present condition, uses, and zoning substantially impair the sound growth of an underutilized site near a metrorail station and prevent the development of new housing and much needed workforce housing.

(g) The Market is an ideal site for transit-oriented development that will increase pedestrian-friendly residential density adjacent to transit facilities that is consistent with the District's goals of maximizing transit usage while reducing automobile dependency.

(h) The New Town at the Capital City Market Project will accomplish neighborhood revitalization and historic preservation and provide workforce housing and jobs.

(i) The Revitalization and Development Plan will create a substantial number of workforce housing units for renters and buyers that fall between 50% to 120% of the Area Median Income.

(j) The Revitalization and Development Plan will create a planned community of housing, office, retail wholesale, local, national and international restaurants, entertainment, recreational and support facilities, and government facilities.

(k) The Revitalization and Development Plan will help reduce traffic congestion, enhance the environment and improve the District's air quality by better planning for and deployment of vehicular traffic, green roof development, and other environmental initiatives.

(l) The Revitalization and Development Plan will allow existing property owners or lessees to invest in the project, become fee simple owners in the new retail and warehouse facility, allow existing property owners to do a like-kind property exchange under section 1031 of the Internal Revenue Code of 1986, approved August 16, 1954 (68A Stat. 302; 26 U.S.C. § 1031), and participate in other revitalization and development options.

(m) The Revitalization and Development Plan will allow the present retailers and wholesalers to continue their businesses in the new revitalized Capital City Market.

(n) The Revitalization and Development Plan will be carried out in such a way that it will cause minimal interference to the existing operators of retail and wholesale establishments and allow them to continue to operate during construction.

(o) The Revitalization and Development Plan will preserve the original Market buildings (Union Market) bounded by 4th and 5th Streets and Morse and Penn Streets unless it is found to be impractical to do so by the Developer and the Office of Planning.

(p) The Developer has agreed to require construction contractors to enter into a project labor agreement for the project with a training component for District residents.

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(q) The construction of the project will take more than 5 years, which will allow District residents to be trained as apprentices for jobs created by the development and become full-fledged journeyman on the project.

(r) The Revitalization and Development Plan provides for a workforce housing set-aside of a minimum of 20% and a goal of 40%, which will have a significant impact on increasing the District's workforce housing supply by approximately 320 or 640 units, respectively.

(s) The Mayor is authorized to negotiate a land swap or sale with Gallaudet University and to use other means, such as property tax abatement, tax increment financing, and PILOT programs, to assist the Developer in achieving the 40% goal of workforce housing and other community needs.

(t) The Revitalization and Development Plan calls for 40% of the workforce housing to be set aside for teachers, policemen, firemen, and other critical District of Columbia employees and the remaining 60% to be set-aside for District of Columbia residents who are first-time home purchasers and are at 50% to 120% of the Area Median Income.

(u) The Revitalization and Development Plan will relocate the retail and wholesale operations of the existing Market into modern facilities in the northeast portion of the site which will allow for convenient ingress and egress access for large trailer trucks to and from New York Avenue and Florida Avenue while screening them from residential areas and pedestrian traffic.

(v) The Revitalization and Development Plan provides that the new facilities for the existing retail and wholesale operations will be constructed as condominiums or cooperatives to allow the retailers and wholesalers to own their retail or wholesale facilities.

(w) The Revitalization and Development Plan will provide enhanced services for the residents of New Town, the surrounding neighborhoods, and visitors, including, among other things, a state-of-the-art YMCA with a daycare center, teen center; programs for senior citizens, swimming pool, indoor basketball courts, and a fitness center; a state-of-the-art community health clinic and a state-of-the-art public library branch if the District determines they are needed; and an outdoor amphitheater (designed to convert to an ice skating rink in winter) to showcase local and national entertainers to District citizens and visitors.

(x) The Revitalization and Development Plan provides that the YMCA, library, and community health clinic will all operate on a 20-year lease-to-purchase agreement with ownership transferring to the leaseholders for \$1 at lease expiration.

(y) The Revitalization and Development Plan will create an array of new retail and restaurant businesses and create hundreds of new permanent jobs as well as hundreds of construction jobs.

(z) The Revitalization and Development Plan and its proposed concept is supported by the 3 Advisory Neighborhood Commissions in Ward 5 and the Brentwood Community Association, Inc.

(aa) The Developer is committed to enter into a First-Source Employment Agreement and a Local, Small, and Disadvantaged Business Enterprise Memorandum of Understanding with the appropriate District government agencies.

(bb) The Capital City Market footprint area is currently zoned C-1 for low-density, light-industry and commercial uses and must be re-zoned as C-3-C with an overlay to allow the height and density necessary to achieve the goals of the project and to allow residential and warehouse uses to co-exist as part of New Town at the Capital City Market.

(cc) Certain alleys within the footprint of the Capital City Market will have to be closed.

(dd) The Market is, or Revitalization and Development Plan will be, designated as a renewal area sufficient to be eligible for the most favorable HUD-guaranteed financing programs.

(ee) On May 7, 2002, the Council unanimously passed the Request for Proposals for the Disposition of the Washington Beef Properties, 1240-1248 4th Street, N.E., Lots 5, 800, and 802 in Square 3587 Approval Resolution of 2002, effective May 7, 2002 (Res. 14-440; 49 DCR 5760).

(ff) On June 11, 2002, DHCD issued a request for proposals for the Washington Beef Properties located on the Capital City Market site.

(gg) On July 8, 2003, the Council unanimously passed the Unsolicited Proposal Submitted by Sang Oh & Company for the Negotiated Purchase and Disposition of Surplus Property at 375 Morse Street, N.E., also known as the Ironworks Parcel, Emergency Approval Resolution of 2003, effective July 8, 2003 (Res. 15-214; 50 DCR 6941).

(hh) On February 26, 2004; pursuant to that certain Land Disposition Agreement between Sang Oh & Company, Inc., and DHCD, Sang Oh & Company, Inc., was granted the development rights to the Washington Beef Properties.

(ii) Working with DHCD, ANC 5B, and the Ward 5 community, Sang Oh & Company, Inc., has completed architectural drawings for a proposed 11-story retail office and condominium building with a 20% percent affordable housing unit set-aside at 80% percent of the Area Median Income, and with community amenities for the Ward 5 community, that is, a 100-seat community meeting room, an office for ANC 5B, and space and signage for a Metropolitan Police Department substation.

(jj) The proposed development is consistent with the purposes and goals of the Revitalization and Development Plan and with architectural designs for New Town at the Capital City Market concept.

(kk) Sang Oh & Company, Inc., has completed demolition of the structures on the Washington Beef Properties site and has submitted its PUD application to the Zoning Commission.

(Mar. 14, 2007, D.C. Law 16-278, § 203, 54 DCR 895.)

Legislative history of Law 16-278. — For Law 16-278, see notes following § 6-1061.01.

§ 6-1062.04. Office of Planning.

The Developer shall work with the Office of Planning and other appropriate agencies prior to and during the zoning process to ensure that the District's

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planning and other policy objectives and goals, to the extent that the project is not jeopardized financially, are achieved to the fullest extent possible.

(Mar. 14, 2007, D.C. Law 16-278, § 204, 54 DCR 895.)

Legislative history of Law 16-278. — For Law 16-278, see notes following § 6-1061.01.

§ 6-1062.05. Authority of the Deputy Mayor for Economic Development.

The Deputy Mayor for Economic Development shall have the authority and responsibility of ensuring that the District's interests and goals, to the fullest extent possible, are achieved as set forth in this part. When the project is approved for construction, the Deputy Mayor and the Developer will develop a timetable for the development of the project and will provide detailed quarterly reports to the Mayor and the Council.

(Mar. 14, 2007, D.C. Law 16-278, § 205, 54 DCR 895.)

Legislative history of Law 16-278. — For Law 16-278, see notes following § 6-1061.01.

§ 6-1062.06. Development of conceptual plan.

The Council directs the Mayor through the appropriate agencies working with the Developer, the affected community (Ward 5), and the landowners and renters of the Capital City Market to develop a Final Conceptual Plan and an Agreement between the District and the Developer within 180 days of March 14, 2007. Once the Final Conceptual Plan and the Agreement have received affirmative written approval from property owners representing 50% or more of the site of the Capital City Market, the Mayor shall submit the Final Conceptual Plan and Agreement to the Council for approval within 30 days of such affirmative written approval.

(Mar. 14, 2007, D.C. Law 16-278, § 206, 54 DCR 895.)

Legislative history of Law 16-278. — For Law 16-278, see notes following § 6-1061.01.

§ 6-1062.07. Eminent domain.

The Mayor shall not use eminent domain for any aspect of the revitalization or development of this site without the prior approval of the Council.

(Mar. 14, 2007, D.C. Law 16-278, § 207, 54 DCR 895.)

Legislative history of Law 16-278. — For Law 16-278, see notes following § 6-1061.01.

*Subchapter IV. Neighborhood Investment Program.***§ 6-1071. Creation of Neighborhood Investment Fund.**

(a) There is established, as a nonlapsing, revolving fund outside the General Fund of the District of Columbia, a fund designated as the Neighborhood Investment Fund. The purposes of the Neighborhood Investment Fund shall be to fund the development and implementation of neighborhood investment plans under § 6-1072 and to finance and assist revitalization activities that will benefit residents of Neighborhood Program Target Areas designated in § 6-1073. There shall be deposited into the fund such funds as may be appropriated from time to time. Subject to the applicable laws relating to the appropriation of District funds, monies received and credited to the Neighborhood Investment fund shall be used to carry out the objectives of this subchapter. All funds deposited into the fund shall not revert to the General Fund of the District of Columbia at the end of any fiscal year or at any other time, but shall be continually available for the purposes of the subchapter.

(b) The Mayor shall submit to the Council, as part of the annual budget, a request for an appropriation for expenditures from the Neighborhood Investment Fund. The requested expenditures shall be consistent with the purposes of the Neighborhood Investment Fund set forth in subsection (a) of this section.

(c) Within 9 months of March 30, 2004, the Mayor shall develop an implementation plan for the first year of the program. In subsequent years, the yearly implementation plan shall be submitted to the Council prior to the start of the fiscal year. These implementation plans shall contain specific references to the amount to be spent each year by:

- (1) Targeted area;
- (2) Type of project; and
- (3) Specific project, where known.

(d) The Mayor shall provide the Council with a report, within 90 days of the end of the fiscal year, detailing the expenditures from the Neighborhood Investment Fund by:

- (1) Targeted area;
- (2) Type of project; and
- (3) Specific project.

(e) The plans developed pursuant to subsection (c) of this section shall be submitted by the Mayor to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed plan, in whole or in part, by resolution within this 45-day review period, the proposed plan shall be deemed disapproved.

(f) The implementation plans for the 4th and subsequent years may include additional Neighborhood Investment Program Target Areas. Such neighborhoods shall be proposed by the Mayor and approved by the Council; provided, that:

- (1) All new Target Areas must be areas that have:
 - (A) A historic or ongoing lack of private investment; and

(B) Areas of concentrated poverty where 30% or more of the population is below the federal poverty level.

(2) No more than 3 additional target neighborhoods are designated.

(3) The Deputy Mayor for Planning and Economic Development shall announce and hold a public hearing after the selection of proposed new Target Areas and prior to Council approval, to gain input from District residents, businesses, Advisory Neighborhood Commissions, and community associations on the goals associated with the proposed Target Area.

(g) The Mayor may make loans or grants from the Neighborhood Investment Fund to facilitate revitalization activities in the Neighborhood Program Target Areas designated in § 6-1073.

(h) Repealed.

(i) Repealed.

(j) The Neighborhood Investment Fund dollars under the budget authority for the Office of the Deputy Mayor for Planning and Economic Development in fiscal year 2010 shall be allocated on a one-time basis as follows:

(1) An amount of \$370,613 for personal and administrative costs associated with the implementation of the Neighborhood Investment Fund, including salary, fringe benefits, and supplies;

(2) An amount of \$1,425,000 to be transferred to the Department of Small and Local Business Development through an intra-District transfer and dispersed to the following programs as follows:

(A) Main Street Program; An amount of \$150,000 to Shaw Main Street Program;

(B) Main Street Program; An amount of \$75,000 to Historic Dupont Main Street Program;

(C) Main Street Group; An amount of \$100,000 to Adams Morgan Main Street Group;

(D) Main Street Group; An amount of \$150,000 to Vinegar Hill, N.W. Main Street Group;

(E) Main Street Program; An amount of \$150,000 to Georgia Avenue Main Street Program;

(F) Main Street Program; An amount of \$150,000 to Rhode Island Main Street Program;

(G) Main Street Program; An amount of \$150,000 to North Capitol Main Street Program;

(H) Main Street Program; An amount of \$150,000 to H Street, N.E. Main Street Program;

(I) Main Street Program; An amount of \$50,000 to Barracks Row Main Street Program;

(J) An amount of \$150,000 to Deanwood Main Street Program; and

(K) Main Street Program; An amount of \$150,000 to Congress Heights Main Street Program;

(3) Each Main Streets program receiving \$150,000 or more through the Neighborhood Investment Fund Implementation Plan Amendment Act of 2009 [D.C. Law 18-111, subtitle G of title II], as set forth in paragraph (2) of this subsection, shall use \$50,000 of its \$150,000 allocation for a Business Improvement District Litter Cleanup program pursuant to § 1-325.111;

(4) An amount of \$3 million for the New Communities Human Capital Program;

(5) An amount of \$1.1 million to be transferred annually, adjusted yearly for inflation, to the Career Technical Training Fund pursuant to subsection (i) of this section;

(6) An amount of \$2.091 million for the DC USA parking garage; and

(7) An amount of \$835,000 for each of the following Neighborhood Investment Fund Target Areas to be used for competitive grants for projects, programs, or initiatives, exclusively in each area and consistent with this subchapter:

- (A) Columbia Heights;
- (B) Brightwood;
- (C) Washington Highlands;
- (D) Deanwood/Deanwood Heights;
- (E) Bloomingdale/Eckington;
- (F) Logan Circle Neighborhood;
- (G) H Street;
- (H) Anacostia;
- (I) Congress Heights;
- (J) Shaw Neighborhood;
- (K) Brookland/Edgewood; and
- (L) Bellvue.

(k) The Neighborhood Investment Fund dollars under the budget authority of the Office of the Deputy Mayor for Planning and Economic Development in fiscal year 2011 shall be allocated on a one-time basis as follows:

(1) An amount of \$2,293,502 shall be available to support grants to not-for-profit organizations for projects and programs that fulfill the goals of this subchapter. Project and program types that may be funded under this paragraph include vocational training and job placement for youth and adults, senior- and youth-oriented programming, affordable housing, senior housing, small business technical assistance, and predevelopment and project financing for the construction and rehabilitation of affordable housing, mixed-use, and community-based facility projects.

(2) An amount of \$190,059 shall be available to support personnel and administrative costs associated with the implementation of this subchapter, including salary, fringe benefits, marketing, community outreach, and supplies.

(3) An amount of \$1.1 million shall be deposited in the Career Technical Training Fund and used to fund costs associated with the 24-hour vocational education programs at Phelps Architecture, Construction, and Engineering High School, the Academy for Construction and Design at Cardozo Senior High School, and the Hospitality Public Charter School at Roosevelt High School.

(4) An amount of \$2 million shall be available to provide grants and other funding in support of the New Communities Human Capital program, including intensive case management, workforce development focused on education, training, and employment for adults and youth, financial literacy, health services, and increased public safety.

(1) This section shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan.

(Mar. 30, 2004, D.C. Law 15-131, § 2, 51 DCR 1797; Sept. 18, 2007, D.C. Law 17-20, § 2132, 54 DCR 7052; Mar. 20, 2008, D.C. Law 17-123, § 2, 55 DCR 1513; Aug. 16, 2008, D.C. Law 17-219, § 7044, 55 DCR 7598; Mar. 3, 2010, D.C. Law 18-111, § 2061, 57 DCR 181; Mar. 31, 2011, D.C. Law 18-338, § 2, 58 DCR 616; Apr. 8, 2011, D.C. Law 18-370, § 202, 58 DCR 1008; Sept. 14, 2011, D.C. Law 19-21, § 2022, 58 DCR 6226.)

Effect of amendments. — D.C. Law 17-20, in subsec. (a), inserted “The purposes of the Neighborhood Investment Fund shall be to fund the development and implementation of neighborhood investment plans under § 6-1072 and to finance and assist revitalization activities that will benefit residents of Neighborhood Program Target Areas designated in § 6-1073.”; in subsec. (b), inserted “The requested expenditures shall be consistent with the purposes of the Neighborhood Investment Fund set forth in subsection (a) of this section.”; and added subsec. (g).

D.C. Law 17-123, in subsec. (a), substituted “17.4%” for “15%”.

D.C. Law 17-219, in subsec. (a), deleted “, subject to authorization by Congress in an appropriations act” following “subchapter”.

D.C. Law 18-111, in subsec. (c), substituted “the program” for “a 5-year program”; and added subsecs. (h) to (j).

D.C. Law 18-338, in subsec. (j)(2), substituted “following programs” for “following Main Street programs” in the introductory language, substituted “Main Street Program,” for a semicolon in subpars. (A), (B), (E) to (I), and (K), substituted “Main Street Group,” for a semicolon in subpars. (C) and (D), and substituted “Main Street Program; and” for “; and” in subpar. (J).

D.C. Law 18-370 added subsec. (k).

D.C. Law 19-21, in subsec. (a), substituted “There shall be deposited into the fund such funds as may be appropriated from time to time.” for “Subject to appropriations, there shall be deposited annually into the Neighborhood Investment Fund 17.4% of the personal property tax imposed by § 47-1522(a); provided, that the amount deposited into the Neighborhood Investment Fund from the personal property tax shall not exceed \$10 million annually.”; repealed subsecs. (h) and (i); and added subsec. (l).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(a) of Neighborhood Investment Amendment Temporary Act of 2006 (D.C. Law 16-207, March 2, 2007, law notification 54 DCR 2505).

Section 2 of D.C. Law 18-179, in subsec. (j)(2), deleted “Main Street” from the lead-in language, substituted “Main Street Program,” for a

semicolon in subpars. (A), (B), (C), (E), (F), (G), (H), (I), and (K), substituted “for direct service delivery managed through, or for an organization chosen by, the Department of Small and Local Business Development for the commercial corridor designated as Vinegar Hill South Main Street” for “to Vinegar Hill, N.W.” in subpar. (D), and substituted “Main Street Program; and” for “; and” in subpar. (J).

Section 4(b) of D.C. Law 18-179 provided that the act shall expire after 225 days of its having taken effect.

Temporary Addition of Section. — For temporary (225 day) addition, see § 2 of Lower Georgia Avenue Job Training Center Funding Authorization Temporary Act of 2007 (D.C. Law 17-3, April 18, 2003, law notification 54 DCR 6582).

Temporary Amendment of Section. — Section 2 of D.C. Law 18-221, in subsec. (j)(2)(E), substituted “to an organization currently providing business services for the commercial corridor designated as Georgia Avenue Main Street or for direct service delivery managed through the Department of Small and Local Business Development for the commercial corridor designated as Georgia Avenue Main Street” for “to Georgia Avenue, N.W.”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(a) of Neighborhood Investment Emergency Amendment Act of 2006 (D.C. Act 16-468, July 31, 2006, 53 DCR 6761).

For temporary (90 day) amendment of section, see § 2(a) of Neighborhood Investment Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-517, October 27, 2006, 53 DCR 9101).

For temporary (90 day) amendment of section, see § 2(a) of Neighborhood Investment Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-8, January 16, 2007, 54 DCR 1468).

For temporary (90 day) enactment, see § 2 of Lower Georgia Avenue Job Training Center Funding Authorization Emergency Act of 2007 (D.C. Act 17-12, January 26, 2007, 54 DCR 1517).

For temporary (90 day) amendment of section, see § 2132 of Fiscal Year 2008 Budget

Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

For temporary (90 day) amendment of section, see § 2061 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) addition, see § 2062 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 2061 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

For temporary (90 day) addition, see § 2062 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

For temporary (90 day) amendment of section, see § 2 of Adams Morgan Main Street Group Emergency Amendment Act of 2010 (D.C. Act 18-342, March 22, 2010, 57 DCR 2852).

For temporary (90 day) amendment of section, see § 2 of Georgia Avenue Main Street Authorization Emergency Amendment Act of 2010 (D.C. Act 18-434, June 14, 2010, 57 DCR 5384).

For temporary (90 day) amendment of section, see § 2 of Adams Morgan Main Street Group Clarification Emergency Amendment Act of 2010 (D.C. Act 18-677, January 12, 2011, 58 DCR 595).

For temporary (90 day) amendment of section, see § 202 of Fiscal Year 2011 Supplemental Budget Support Emergency Act of 2010 (D.C. Act 18-694, January 19, 2011, 58 DCR 662).

Legislative history of Law 15-131. — Law 15-131, the “Neighborhood Investment Act of 2004”, was introduced in Council and assigned Bill No. 15-128, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on December 2, 2003, and January 6, 2004, respectively. Signed by the Mayor on January 29, 2004, it was assigned Act No. 15-332 and transmitted to both Houses of Congress for its review. D.C. Law 15-131 became effective on March 30, 2004.

Legislative history of Law 17-20. — For Law 17-20, see notes following § 6-1061.02.

Legislative history of Law 17-123. — Law 17-123, the “Small Business Commercial Property Tax Relief Act of 2008”, was introduced in Council and assigned Bill No. 17-20 which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on December 11, 2007, and January 8, 2008, respectively. Signed by the Mayor on January 24, 2008, it was assigned Act

No. 17-272 and transmitted to both Houses of Congress for its review. D.C. Law 17-123 became effective on March 20, 2008.

Legislative history of Law 17-219. — Law 17-219, the “Fiscal Year 2009 Budget Support Act of 2008”, was introduced in Council and assigned Bill No. 17-678, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 13, 2008, and June 3, 2008, respectively. Signed by the Mayor on June 26, 2008, it was assigned Act No. 17-419 and transmitted to both Houses of Congress for its review. D.C. Law 17-219 became effective on August 16, 2008.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 6-226.

Legislative history of Law 18-338. — Law 18-338, the “Adams Morgan Main Street Group Clarification Amendment Act of 2010”, was introduced in Council and assigned Bill No. 18-697, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on December 7, 2010, and December 21, 2010, respectively. Signed by the Mayor on January 12, 2011, it was assigned Act No. 18-683 and transmitted to both Houses of Congress for its review. D.C. Law 18-338 became effective on March 31, 2011.

Legislative history of Law 18-370. — Law 18-370, the “Fiscal Year 2011 Supplemental Budget Support Act of 2010”, was introduced in Council and assigned Bill No. 18-1100, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 7, 2010, and December 21, 2010, respectively. Signed by the Mayor on January 27, 2011, it was assigned Act No. 18-721 and transmitted to both Houses of Congress for its review. D.C. Law 18-370 became effective on April 8, 2011.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 6-226.

Short title. — Short title: Section 201 of D.C. Law 18-370 provided that subtitle A of title II of the act may be cited as “Neighborhood Investment Fund Implementation Amendment Act of 2010”.

Short title: Section 2021 of D.C. Law 19-21 provided that subtitle C of title II of the act may be cited as “Neighborhood Investment Fund Amendment Act of 2011”.

Short title: Section 2131 of D.C. Law 17-20 provided that subtitle M of title II of the act may be cited as the “Neighborhood Investment Amendment Act of 2007”.

Short title: Section 2060 of D.C. Law 18-111 provided that subtitle G of title II of the act may be cited as the “Neighborhood Investment Fund Implementation Amendment Act of 2009”.

Resolutions. — Resolution 16-589, the “Neighborhood Investment Act Spending Plan

for FY 2006 Resolution of 2006", was approved effective March 7, 2006.

Resolution 16-596, the "Neighborhood Investment Act Spending Plan for Fiscal Year 2006 Resolution of 2006", was approved effective April 4, 2006.

Resolution 16-955, the "Neighborhood Investment Act Spending Plan for FY 2007 Emergency Approval Resolution of 2006", was approved effective December 19, 2006.

Resolution 17-433, the "Neighborhood Investment Act Spending Plan for FY 2008 Emergency Approval Resolution of 2007", was approved effective November 6, 2007.

Resolution 17-824, the "Neighborhood Investment Act Spending Plan for Fiscal Year 2009 Emergency Approval Resolution of 2008", was approved effective October 7, 2008.

Editor's notes. — Section 2062 of D.C. Law 18-111 provided:

"Sec. 2062. NIF Fund Balance.

"There is established as a nonlapsing fund

the Fiscal Year 2010 NIF Fund ('Fund') into which the Chief Financial Officer shall deposit \$3.2 million in fiscal year 2009 funds from the anticipated fiscal year 2009 Neighborhood Investment Fund carryover. All funds deposited into the Fund, and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in section 2(j) of the Neighborhood Investment Act of 2004, effective March 30, 2004 (D.C. Law 15-131; D.C. Official Code § 6-1071(j)) ('Act'), without regard to fiscal year limitation, subject to authorization by Congress. No funds shall be transferred from the Fund until October 1, 2009, at which time the funds shall be used in accordance with section 2(j) of the Act."

Section 203 of D.C. Law 18-370 provided: "Sec. 203. Applicability. This subtitle shall apply as of October 1, 2010."

§ 6-1072. Neighborhood Investment Program.

(a) The Mayor shall develop a neighborhood investment plan designed to accomplish the goals of this subchapter for each targeted area, which shall be:

(1) Developed with input from Advisory Neighborhood Commissions, community groups, neighborhood institutions, the faith community, representatives of the business community, and other neighborhood stakeholders;

(2) Submitted to the affected Advisory Neighborhood Commissions, community groups, neighborhood institutions, the faith community, representatives of the business community, and other neighborhood stakeholders for a comment period of one month; and

(3) Submitted by the Mayor to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed plan, in whole or in part, by resolution within this 45-day review period, the proposed plan shall be deemed approved.

(b) The neighborhood investment plans shall detail, where appropriate, the use of the following tools for neighborhood investment:

(1) The establishment of a pooled or subsidized revenue bond for the use of businesses and organizations within the Neighborhood Investment Program target areas;

(2) The use of tax increment financing districts for the Neighborhood Investment Program target areas;

(3) The specific dedication of District and other resources for the improvement of infrastructure and public spaces, such as roads, sidewalks, lighting, streetscape, parks, community centers, and libraries;

(4) An inventory of each property within the target area detailing the ownership, and, if the property is owned by the District government, a plan for the disposition or improved use of vacant, abandoned, underutilized, or negatively utilized lots, or if owned by the federal government, recommenda-

tions for the improved use of vacant, abandoned, underutilized, or negatively utilized lots;

(5) The use of payments in lieu of taxes or tax abatements to facilitate development; and

(6) Increased dedication of the resources of the Metropolitan Police Department, for the purposes of neighborhood stabilization, where necessary.

(c) The Department of Housing and Community Development may give priority scoring to the use of Housing Production Trust Funds or Community Development Block Grants in the targeted areas defined in § 6-1073 or to the targeted areas proposed by the Mayor pursuant to § 6-1071(f).

(d) The plans shall outline the potential roles and responsibilities of the Housing Finance Agency, the National Capital Revitalization Corporation, the RLA Revitalization Corporation, the Office of Property Management, and the Board of Education where appropriate.

(e) The plans shall be designed to ensure that expenditures from the Neighborhood Investment Fund are used to supplement, rather than supplant, operating and capital dollars already appropriated to District of Columbia agencies for similar purposes. The plans shall also seek to coordinate the expenditures of operating and capital dollars already appropriated to District of Columbia government agencies to support neighborhood goals.

(f) The plans shall outline how funds will be used to develop, maintain, and improve physical facilities and infrastructure owned by the District of Columbia, particularly for projects or improvements in neighborhood plans that do not qualify for capital budget funding.

(Mar. 30, 2004, D.C. Law 15-131, § 3, 51 DCR 1797; Apr. 13, 2005, D.C. Law 15-354, § 15, 52 DCR 2638.)

Effect of amendments. — D.C. Law 15-354, in subsec. (c), validated a previously made technical correction.

Legislative history of Law 15-131. — For Law 15-131, See notes following § 6-1071

Legislative history of Law 15-354. — Law 15-354, the “Technical Amendments Act of 2004”, was introduced in Council and assigned Bill No. 15-1130 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 7, 2004, and December 21, 2004, respectively. Signed by the Mayor on February 9, 2005, it was assigned Act No. 15-770 and transmitted to both Houses of Congress for its review. D.C. Law 15-354 became effective on April 13, 2005.

Resolutions. — Resolution 17-878—17-886, the “National Investment Plan”, was approved effective December 2, 2008.

Resolution 17-939, the “Brightwood and Upper Georgia Avenue Neighborhood Investment Plan Emergency Approval Resolution”, was approved effective December 16, 2008.

Resolution 17-941, the “Washington Highlands Neighborhood Investment Plan Emergency Approval Resolution of 2008”, was approved effective December 16, 2008.

Resolution 18-193, the “Bellevue Neighborhood Investment Plan Approval Resolution of 2009”, was approved effective June 30, 2009.

§ 6-1073. Neighborhood Investment Program Target Areas.

(a) There are established the following Neighborhood Investment Program Target Areas within which revitalization activities shall be supported by funds appropriated from the Neighborhood Investment Fund:

(1)(A) Target Area #1 — Shaw. The Shaw target area is defined as starting

at the corner of 9th Street and Florida Avenue, N.W., east along Florida Avenue, N.W., to North Capitol Street, south along North Capitol Street to Massachusetts Avenue, west along Massachusetts Avenue, N.W., to 9th Street, N.W., and north along 9th Street, N.W., to Florida Avenue, N.W.

(B) Among the goals of this target area are increasing foot and bicycle police patrols, the preservation of project based Section 8 multifamily affordable housing, increasing homeownership opportunities for neighborhood residents, and renovating and upgrading the Watha T. Daniel public library.

(2)(A) Target Area #2 — Logan Circle. The Logan Circle target area is defined as starting at the corner of 9th Street, N.W., and Florida Avenue, N.W., south on 9th Street, N.W., to Massachusetts Avenue, N.W., west on Massachusetts Avenue, N.W., to 16th Street, N.W., north on 16th Street, N.W., to U Street, N.W., and east on U Street, N.W., to Florida Avenue, N.W.

(B) Among the goals of this target area are preserving affordable housing, including project based Section 8 housing, housing code enforcement and receivership of slum properties, acquisition, preservation, and redevelopment of 15 to 20 multifamily buildings for low-income residents, development of special-needs housing paired with social service delivery systems, and better library and recreation facilities, especially for neighborhood youth.

(3)(A) Target Area #3 — Deanwood Heights. The Deanwood Heights target area is defined as starting at the corner of Hayes Street and 50th Street, N.E., east along Hayes Street, N.E., to 54th Place, N.E., south along 54th Place, N.E., to Nannie Helen Burroughs Avenue, N.E., east along Nannie Helen Burroughs Avenue, N.E., to Eastern Avenue, N.E., southeast along Eastern Avenue, N.E., to Southern Avenue, N.E., southwest along Southern Avenue, N.E., to East Capitol Street, west along East Capitol Street, to Division Avenue, N.E., north along Division Avenue, N.E., to Nannie Helen Burroughs Avenue, N.E., west along Nannie Helen Burroughs Avenue, N.E., to B&O (CSX) Railroad, northwest along B&O (CSX) Railroad to Eastern Avenue, N.E., southeast along Eastern Avenue, N.E., to Nannie Helen Burroughs Avenue, N.E., west along Nannie Helen Burroughs Avenue, N.E., to Division Avenue, N.E., north along Division Avenue, N.E., to Hayes Street, N.E., and west along Hayes Street, N.E., to the starting point. The Deanwood Heights Target area shall also include west along Marvin Gaye Park and north along 50th Street, N.E.

(B) Among the goals of this target area are the acquisition and demolition of abandoned properties, the acquisition and demolition of slum multifamily properties, the building of affordable housing, including housing for senior citizens and assisted living housing, the building of a full service recreation center, the revitalization of neighborhood commercial areas on Eastern and Division Avenues, infrastructure improvements to curbs, sidewalks, and roadways throughout the target area, and the development of a full service restaurant in the neighborhood.

(4)(A) Target Area #4 — Washington Highlands. The Washington Highlands target area is defined as starting at the corner of Southern Avenue and South Capitol Street, S.E., north along South Capitol Street, north along Livingston Road, S.E., northeast along Valley Avenue, S.E., southeast along Wheeler Road, S.E., and southwest along Southern Avenue, S.E.

(B) Among the goals of this target area are the acquisition and demolition of abandoned properties, the building of affordable housing, including housing for senior citizens and assisted living housing, the building of recreational and entertainment facilities such as a bowling alley and ice skating rink on South Capitol Street, the building of a full-service supermarket, and the revival of neighborhood commercial strips to include book stores, florists, and other retail uses.

(5)(A) Target Area #5 — Columbia Heights. The Columbia Heights target area is defined as starting at the corner of Spring Road and Sherman Avenue, N.W., northeast along Rock Creek Church Road, N.W., to Warder Street, N.W., south along Warder Street, N.W., to 4th Street, N.W., southwest along 4th Street, N.W., to Gresham Place, N.W., west along Gresham Place, N.W., to Sherman Avenue, N.W., south along Sherman Avenue to Florida Avenue, N.W., west along Florida Avenue to W Street, N.W., west along W Street, N.W., to 16th Street, N.W., west along Florida Avenue, N.W. to Champlain Street, N.W., north along Champlain Street, N.W., to Columbia Road, N.W., northeast along Columbia Road, N.W., to Mt. Pleasant Street, N.W., northwest along Mt. Pleasant Street, N.W., to Park Road, N.W., west along Park Road, N.W., to Mt. Pleasant Street, N.W., north on Mt. Pleasant Street, N.W., to Piney Branch Park, east through Piney Branch Park to Spring Road, N.W., and east along Spring Road, N.W., to Sherman Avenue, N.W.

(B) Among the goals of this target area are housing code enforcement, and receivership of slum properties, the acquisition, preservation, and redevelopment of 15 to 20 multifamily properties in the area to preserve affordable housing, especially for immigrant families, rent stabilization measures, and the improvement of the Mt. Pleasant Street commercial corridor.

(6)(A) Target Area # 6 — Brightwood and Upper Georgia Avenue. The Brightwood and Upper Georgia Avenue target area is defined as starting at the corner of Kennedy Street, N.W., and 16th Street, N.W., north along 16th Street, N.W., to Alaska Avenue, N.W., northeast along Alaska Avenue, N.W., to Fern Street, N.W., east along Fern Street, N.W., to Georgia Avenue, N.W., north along Georgia Avenue, N.W., to Fern Place, N.W., east along Fern Place, N.W., to Blair Road, N.W., southeast along Blair Road, N.W., to Cedar Street, N.W., east on Cedar Street, N.W., to Carroll Street, N.W., east on Carroll Street, N.W., to Eastern Avenue, N.W., southeast on Eastern Avenue, N.W., to Willow Street, N.W., south on Willow Street, N.W., to Aspen Street, N.W., west on Aspen Street, N.W., to Blair Road, N.W., southeast on Blair Road, N.W., to North Capitol Street, N.E., south along North Capitol Street, N.E., to Kennedy Street, N.W., and west along Kennedy Street, N.W., to 13th Street, N.W., south along 13th Street, N.W., to Arkansas Avenue, N.W., south along Arkansas Avenue, N.W., to 16th Street, N.W., north on 16th Street, N.W., to Kennedy Street, N.W.

(B) Among the goals of this target area are a comprehensive revitalization plan for Georgia Avenue, the development of a full service restaurants [sic] to serve the neighborhood, affordable housing for senior citizens and assisted living housing, the development of neighborhood oriented retail establishments such as coffee shops, ice cream parlors, books stores, and neighborhood

recreation and entertainment centers such as a bowling alley and movie theater, and the enhancement of neighborhood parking.

(7)(A) Target Area #7 — Bloomingdale and Eckington. The Bloomingdale and Eckington target area is defined as starting at New York Avenue, N.W., northwest along Florida Avenue, to 4th Street, N.W., north along 4th Street, N.W., to 5th Street, N.W., east along Michigan Avenue, N.W., to Franklin Street, N.E., east along Franklin Street, N.E., to 4th Street, N.E., south on 4th Street, N.E., to the CSX rail yard, south along the rail yard to New York Avenue, N.E., southwest along New York Avenue, N.E., to Florida Avenue.

(B) Among the goals of this target area are to clean and seal abandoned buildings, to create affordable housing, build a new recreation center and playground, increase foot and bicycle patrols by the Metropolitan Police Department and to eliminate drug trafficking and street prostitution, eradicate rodents through better vector control; revitalize Bloomingdale and Eckington neighborhood commercial areas, and build affordable housing at the Soldier's Home and McMillan Reservoir sites.

(8)(A) Target Area #8 — Brookland and Edgewood. The Brookland and Edgewood target area is defined as starting at 4th Street, N.E., and Rhode Island Avenue, N.E., north along 4th Street, N.E., to Michigan Avenue, N.E., northeast along Michigan Avenue to South Dakota Avenue, N.E., southeast along South Dakota Avenue, N.E., to Rhode Island Avenue, N.E., southwest along Rhode Island Avenue, N.E., to the railroad tracks, south along the railroad tracks to W Street, N.E., southwest along W Street, N.E., to 5th Street, N.E., north along 5th Street, N.E., to Rhode Island Avenue, and southwest along Rhode Island Avenue, N.E., to 4th Street, N.E.

(B) Among the goals of this target area are to revitalize the neighborhood commercial areas in Brookland, along 12th Street, N.E., and upper Rhode Island Avenue from 13th Street to South Dakota Avenue, N.E., eradicate prostitution in the Rhode Island Avenue corridor, build affordable housing in Ft. Lincoln, rebuild the Woodridge Library, and build a new youth recreation center.

(9)(A) Target Area #9 — Anacostia. The Anacostia target area is defined as starting at the Anacostia waterfront and Good Hope Road, S.E., southeast along Good Hope Road, S.E., to Naylor Road, S.E., southeast on Naylor Road, S.E., to Alabama Avenue, S.E., southwest on Alabama Avenue, S.E., to the Suitland Parkway, northwest along the Suitland Park to 18th Street, S.E., north on 18th Street, S.E., to Erie Street, S.E., west on Erie Street, S.E., to Morris Road, S.E., and northwest on Morris Road, S.E., to the Anacostia waterfront.

(B) Among the goals of this target area are to clean and seal abandoned buildings, demolish blighted properties and replace them with affordable housing, build a recreation center for youth, revitalize the Good Hope Road neighborhood commercial district, build a new supermarket to serve the area, and renovate area schools and playgrounds.

(10)(A) Target Area #10 — H Street, N.E. The H Street, N.E., target area is defined as the area within 2 blocks north or south of H Street, N.E., Benning Road, N.E., and Maryland Avenue, N.E., between North Capitol Street and 17th Street, N.E.

(B) Among the goals for this target area are improving connectivity and transit use, creating mixed-use housing opportunities, enhancing neighborhood retail, building on cultural assets, and creating a dynamic destination.

(11)(A) Target Area #11 — Congress Heights. The Congress Heights target area is defined as the area bounded by a line starting at Mississippi Avenue, S.E., and 13th Street, S.E., and running north along 13th Street, S.E., to Alabama Avenue, S.E., then west along Alabama Avenue, S.E., to the southwestern boundary of the St. Elizabeths campus, then northwest along the southwest boundary of the St. Elizabeths campus, then on a line parallel to Lebaum Street, S.E., to Interstate 295, then southwest along Interstate 295 to a line parallel to 4th Street, S.E., then along a line parallel to 4th Street, S.E. to 4th Street, S.E., then along 4th Street, S.E., to Mississippi Avenue, S.E., then along Mississippi Avenue, S.E., to the starting point.

(B) Among the goals for this target area are economic development, increasing homeownership opportunities, and improving the condition of housing stock in the area.

(12)(A) Target Area #12 — Bellevue. The Bellevue target area is defined as the area bounded by Galveston Street, S.W., on the south, First Street, S.E., on the east, Halley Street, S.E., on the north, and Interstate 295 on the west.

(B) Among the goals for this target area are improving public facilities, increasing homeownership opportunities, and enhancing neighborhood retail.

(b) In determining the geographic extent of the target areas set forth in subsection (a) of this section, the Mayor shall include the properties on both sides of the streets that establish the outer boundaries of each target area.

(Mar. 30, 2004, D.C. Law 15-131, § 4, 51 DCR 1797; Jan. 29, 2008, D.C. Law 17-81, § 2, 54 DCR 11885; Mar. 20, 2009, D.C. Law 17-305, § 2, 56 DCR 21; Oct. 26, 2010, D.C. Law 18-246, § 2, 57 DCR 7564.)

Effect of amendments. — D.C. Law 17-81 designated the existing text as subsec. (a); rewrote the lead-in text of subsec. (a), which had read as follows: “There are established the following Neighborhood Investment Program Target Areas.”; designated the existing texts of subssecs. (a)(10), (11), and (12) as (a)(10)(A), (11)(A), and (12)(A); and added subssecs. (a)(10)(B), (11)(B), and (12)(B) and (b).

D.C. Law 17-305 rewrote subsec. (a)(6)(A), which had read as follows: “(6)(A) Target Area #6—Brightwood and Upper Georgia Avenue. The Brightwood and Upper Georgia Avenue target area is defined as starting at the corner of Kennedy Street, N.W., and 16th Street, N.W., north along 16th Street, N.W., to Alaska Avenue, N.W., northeast along Alaska Avenue, N.W., to Fern Street, N.W., east along Fern Street, N.W., to Fern Place, N.W., east along Fern Place, N.W., to Blair Road, N.W., southeast along Blair Road, N.W., to 5th Street, N.W., south along 5th Street, N.W., to Kennedy Street, N.W., and west along Kennedy Street, N.W., to 16th Street, N.W.”

D.C. Law 18-246 rewrote subsec. (a)(8)(A), which formerly read:

“(8)(A) Target Area #8—Brookland and Edgewood. The Brookland and Edgewood target area is defined as starting at 4th Street, N.E., and Rhode Island Avenue, N.E., north along 4th Street, N.E., to Michigan Avenue, N.E., northeast along Michigan Avenue to South Dakota Avenue, N.E., southeast along South Dakota Avenue, N.E., to Rhode Island Avenue, N.E., and southwest along Rhode Island Avenue, N.E., to 4th Street, N.E.”

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(b) of Neighborhood Investment Amendment Temporary Act of 2006 (D.C. Law 16-207, March 2, 2007, law notification 54 DCR 2505).

For temporary (225 day) amendment of section, see § 2 of Neighborhood Investment Clarification Temporary Amendment Act of 2007 (D.C. Law 17-78, January 23, 2008, law notification 55 DCR 1458).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(b) of

Neighborhood Investment Emergency Amendment Act of 2006 (D.C. Act 16-468, July 31, 2006, 53 DCR 6761).

For temporary (90 day) amendment of section, see § 2(b) of Neighborhood Investment Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-517, October 27, 2006, 53 DCR 9101).

For temporary (90 day) amendment of section, see § 2(b) of Neighborhood Investment Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-8, January 16, 2007, 54 DCR 1468).

For temporary (90 day) amendment of section, see § 2 of Neighborhood Investment Emergency Amendment Act of 2007 (D.C. Act 17-158, October 18, 2007, 54 DCR 10926).

For temporary (90 day) amendment of section, see § 2 of Neighborhood Investment Clarification Emergency Amendment Act of 2007 (D.C. Act 17-176, November 2, 2007, 54 DCR 11221).

For temporary (90 day) amendment of section, see § 2 of Neighborhood Investment Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-270, January 29, 2008, 55 DCR 1504).

For temporary (90 day) amendment of section, see § 2 of Ward 4 Neighborhood Investment Fund Boundary Expansion Emergency Amendment Act of 2008 (D.C. Act 17-603, December 16, 2008, 56 DCR 15).

For temporary (90 day) amendment of section, see § 2 of Ward 4 Neighborhood Investment Fund Boundary Expansion Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-30, March 16, 2009, 56 DCR 2325).

Legislative history of Law 15-131. — For Law 15-131, See notes following § 6-1071

Legislative history of Law 17-81. — Law 17-81, the “Neighborhood Investment Amendment Act of 2007”, was introduced in Council and assigned Bill No. 17-181 which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on October 2, 2007, and November 6, 2007, respectively. Signed by the Mayor on November 26, 2007, it was assigned Act No. 17-192 and transmitted to both Houses of Congress for its review. D.C. Law 17-81 became effective on January 29, 2008.

Legislative history of Law 17-305. — Law 17-305, the “Ward 4 Neighborhood Investment Fund Boundary Expansion Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-779 which was referred to the Committee of Economic Development. The Bill was adopted on first and second readings on October 7, 2008, and December 2, 2008, respectively. Signed by the Mayor on December 16, 2008, it was assigned Act No. 17-605 and transmitted to both Houses of Congress for its review. D.C. Law 17-305 became effective on March 20, 2009.

Legislative history of Law 18-246. — Law 18-246, the “Ward 5 Neighborhood Investment Fund Boundary Expansion Amendment Act of 2010”, was introduced in Council and assigned Bill No. 18-800, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on June 29, 2010, and July 13, 2010, respectively. Signed by the Mayor on July 10, 2010, it was assigned Act No. 18-497 and transmitted to both Houses of Congress for its review. D.C. Law 18-246 became effective on October 26, 2010.

CHAPTER 11. HISTORIC LANDMARK AND HISTORIC DISTRICT PROTECTION.

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Subchapter I. General Provisions.

§ 6-1101. Declaration and purposes.

(a) It is hereby declared as a matter of public policy that the protection, enhancement, and perpetuation of properties of historical, cultural, and esthetic merit are in the interests of the health, prosperity, and welfare of the people of the District of Columbia. Therefore, this subchapter is intended to:

(1) Effect and accomplish the protection, enhancement, and perpetuation of improvements and landscape features of landmarks and districts which represent distinctive elements of the city's cultural, social, economic, political, and architectural history;

(2) Safeguard the city's historic, aesthetic and cultural heritage, as embodied and reflected in such landmarks and districts;

(3) Foster civic pride in the accomplishments of the past;

(4) Protect and enhance the city's attraction to visitors and the support and stimulus to the economy thereby provided; and

(5) Promote the use of landmarks and historic districts for the education, pleasure, and welfare of the people of the District of Columbia.

(b) It is further declared that the purposes of this subchapter are:

(1) With respect to properties in historic districts:

(A) To retain and enhance those properties which contribute to the character of the historic district and to encourage their adaptation for current use;

(B) To assure that alterations of existing structures are compatible with the character of the historic district; and

(C) To assure that new construction and subdivision of lots in an historic district are compatible with the character of the historic district;

(2) With respect to historic landmarks:

(A) To retain and enhance historic landmarks in the District of Columbia and to encourage their adaptation for current use; and

(B) To encourage the restoration of historic landmarks.

(3) With respect to archaeological sites designated as historic landmarks or contributing properties within historic districts:

(A) To protect historic and prehistoric archaeological sites from irreparable loss or destruction; and

(B) To encourage the retrieval of archaeological information and artifacts when the destruction of an archaeological site is necessary in the public interest.

(Mar. 3, 1979, D.C. Law 2-144, § 2, 25 DCR 6939; Nov. 16, 2006, D.C. Law 16-185, § 2(a), 53 DCR 6712.)

Section references. — This section is referred to in §§ 6-1102 and 6-1103.

Prior Codifications. — 1981 Ed., § 5-1001. 1973 Ed., § 5-821.

Effect of amendments. — D.C. Law 16-185 added subsec. (b)(3).

Legislative history of Law 2-144. — Law 2-144, the “Historic Landmark and Historic District Protection Act of 1978,” was introduced in Council and assigned Bill No. 2-367, which was referred to the Committee on Housing and Urban Development. The Bill was adopted on first, amended first, and second readings on October 31, 1978, November 14, 1978 and November 28, 1978, respectively. Signed by the Mayor on December 27, 1978, it was assigned Act No. 2-318 and transmitted to both Houses of Congress for its review.

Legislative history of Law 16-185. — Law 16-185, the “Historic Preservation Amendment Act of 2006,” was introduced in Council and

assigned Bill No. 16-195, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 6, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 25, 2006, it was assigned Act No. 16-463 and transmitted to both Houses of Congress for its review. D.C. Law 16-185 became effective on November 16, 2006.

Delegation of Authority. — Delegation of Authority Pursuant to the Historic Landmark and Historic District Protection Act of 1978, as amended and the National Historic Preservation Act, as amended, see Mayor’s Order 2011-120, July 18, 2011 (58 DCR 6464).

Editor’s notes. — Because of the codification of D.C. Law 5-69 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 11 as subchapter I, “subchapter” has been substituted for “chapter”, where applicable, in this section.

CASE NOTES

ANALYSIS

Adaptation for current use.

Alterations.

Federal or foreign government.

Historical or cultural merit.

In general.

Judicial review generally.

Mootness.

Restrictions on future use.

Safeguard of heritage.

Sufficiency of evidence.

Adaptation for current use.

Mayor’s agent properly authorized issuance of permit under Preservation Act for demolition of south wall of historic firehouse, based on determination that partial removal of south wall would permit the retention, enhancement, and adaptation for current use of the building; mayor’s agent did not take into account im-

proper cost and safety factors. D.C. Code 1981, §§ 5-1001(b)(2), 5-1004(e). *District of Columbia Preservation League v. District of Columbia Dep’t of Consumer & Regulatory Affairs*, 711 A.2d 1273, 1998 D.C. App. LEXIS 111 (1998).

Mayor’s agent did not apply Historic Landmark and Historic District Protection Act unreasonably in ruling that townhouse owner failed to show that proposed changes were at all necessary to encourage adaptation of structure for current use. D.C. Code 1981, §§ 5-1001(b), 5-1002(10). *Reneau v. District of Columbia*, 676 A.2d 913, 1996 D.C. App. LEXIS 102 (1996).

Alterations.

When mayor’s agent’s decision regarding application to make improvements in historic district is based on interpretation of statute and regulations the mayor’s agent administers, that interpretation will be sustained unless shown to be unreasonable or in contravention

of language of legislative history of the Historic District Protection Act. *Gondelman v. D.C. Dep't of Consumer & Regulatory Affairs*, 789 A.2d 1238, 2002 D.C. App. LEXIS 11 (2002).

Mayor's agent could consider not only proposed changes to the rowhouse, but also the entire site, when considering under Historic District Protection Act whether the alterations proposed in application for curb cut and for related adjustments regarding construction of garage at rowhouse in historic district, including excavation of berm and paving of portion of front yard, were compatible and consistent with character of the historic district. *Gondelman v. D.C. Dep't of Consumer & Regulatory Affairs*, 789 A.2d 1238, 2002 D.C. App. LEXIS 11 (2002).

Mayor's agent and Historic Preservation Review Board (HPRB) could look to District of Columbia's comprehensive plan, mandating that "landscaped green space on publicly owned, privately maintained front and side yards in historic districts and on historic landmarks should be preserved," when determining under Historic District Protection Act whether approval should be given for application for curb cut and for related adjustments regarding construction of garage at rowhouse in historic district, including excavation of berm and paving of portion of front yard. *Gondelman v. D.C. Dep't of Consumer & Regulatory Affairs*, 789 A.2d 1238, 2002 D.C. App. LEXIS 11 (2002).

Determination of mayor's agent that permanent installation of trash dumpsters on public space was inconsistent with preserving sightliness and historic integrity of districts covered by Historic Landmark and Historic District Protection Act was reasonable and not in contravention of statutory language. D.C. Code 1981, § 5-1001(b)(1)(B). *Foster v. Mayor's Agent for Historic Preservation*, 698 A.2d 411, 1997 D.C. App. LEXIS 177 (1997).

Federal or foreign government.

Compliance with District of Columbia's Historic Landmark and Historic District Protection Act, which mandated approval of the Mayor for demolition of a building, was not required in implementing federal development program established by the Pennsylvania Avenue Development Corporation Act of 1972. *Pennsylvania Avenue Development Corporation Act of 1972*, § 2 et seq., 40 U.S.C. § 871 et seq. *Don't Tear It Down, Inc. v. Pennsylvania Ave. Dev. Corp.*, 642 F.2d 527, 1980 U.S. App. LEXIS 14756 (C.A.D.C. 1980).

"Substantial compliance" with local zoning laws, as required by the Foreign Missions Act, is not strict compliance; all that is required is to comply with the spirit of local zoning laws. *State Department Basic Authorities Act of 1956*, § 206(d)(2), as amended, 22 U.S.C. § 4306(d)(2); D.C. Code 1981, § 5-1001. *National Trust for Historic Preservation v. Department of State*, 834 F. Supp. 453, 1993 U.S. Dist. LEXIS 14302 (1993), affirmed in part and reversed in part sub nomine *Sheridan Kalorama Historical Ass'n v. Christopher*, 49 F.3d 750, 311 U.S. App. D.C. 16, 1995 U.S. App. LEXIS 4668 (1995).

Foreign Mission-Board of Zoning Adjustment (FM-BZA) "substantially complied" with local zoning laws, as required by the Foreign Missions Act, in granting Republic of Turkey's application to replace chancery building, by soliciting views of mayor's agent for historic preservation, even though matter was not referred to such agent. *State Department Basic Authorities Act of 1956*, § 206(d)(2), as amended, 22 U.S.C. § 4306(d)(2); D.C. Code 1981, § 5-1001. *National Trust for Historic Preservation v. Department of State*, 834 F. Supp. 453, 1993 U.S. Dist. LEXIS 14302 (1993), affirmed in part and reversed in part sub nomine *Sheridan Kalorama Historical Ass'n v. Christopher*, 49 F.3d 750, 311 U.S. App. D.C. 16, 1995 U.S. App. LEXIS 4668 (1995).

Foreign Missions Act grants the District of Columbia Foreign Missions-Board of Zoning Adjustment (FM-BZA) expansive authority to consider decisions regarding not only location but also replacement and expansion of chancery; Act clearly empowers FM-BZA to resolve broad range of chancery issues, including demolition and expansion. *Department of Basic Authorities Act of 1956*, § 206, as amended, 22 U.S.C. § 4306; D.C. Code 1981, § 5-1001 et seq. *National Trust for Historic Preservation v. Department of State*, 834 F. Supp. 453, 1993 U.S. Dist. LEXIS 14302 (1993), affirmed in part and reversed in part sub nomine *Sheridan Kalorama Historical Ass'n v. Christopher*, 49 F.3d 750, 311 U.S. App. D.C. 16, 1995 U.S. App. LEXIS 4668 (1995).

In granting Republic of Turkey's permit application to replace existing chancery building with larger building, the District of Columbia Foreign Missions-Board of Zoning Adjustment (FM-BZA) was required by Foreign Missions Act to comply substantially with the NHPA and the D.C. Historic Landmark and Historic District Protection Act (DC-HLHDP). *Department of Basic Authorities Act of 1956*, §§ 201, 206, 206(a, d, h), as amended, 22 U.S.C. §§ 4301, 4306, 4306(a, d, h); D.C. Code 1981, § 5-1001 et seq. *National Trust for Historic Preservation v. Department of State*, 834 F. Supp. 453, 1993 U.S. Dist. LEXIS 14302 (1993), affirmed in part and reversed in part sub nomine *Sheridan Kalorama Historical Ass'n v. Christopher*, 49 F.3d 750, 311 U.S. App. D.C. 16, 1995 U.S. App. LEXIS 4668 (1995).

District of Columbia Foreign Missions-Board of Zoning Adjustment (FM-BZA) failed to comply with requirements of the Foreign Missions Act, which at minimum requires substantial

compliance with the NHPA, in failing to refer Republic of Turkey's permit application to demolish chancery building and replace it with a new and larger one to advisory Council on Historic Preservation (ACHP) for comment on proposed undertaking and suggested measures to mitigate any adverse effects caused by project; FM-BZA must give concerns and recommendations of ACHP serious consideration, but is not bound by those recommendations. Department of Basic Authorities Act of 1956, §§ 201, 206, 206(a, d, h), as amended, 22 U.S.C. §§ 4301, 4306, 4306(a, d, h); D.C. Code 1981, § 5-1001 et seq. *National Trust for Historic Preservation v. Department of State*, 834 F. Supp. 453, 1993 U.S. Dist. LEXIS 14302 (1993), affirmed in part and reversed in part sub nomine *Sheridan Kalorama Historical Ass'n v. Christopher*, 49 F.3d 750, 311 U.S. App. D.C. 16, 1995 U.S. App. LEXIS 4668 (1995).

Historical or cultural merit.

Mayor's agent did not fail to apply appropriate standard under Historic Landmark and Historic District Protection Act of 1978 before authorizing demolition permit where, although decision appeared to turn most exclusively on finding that proposed project was of special merit, agent considered historical significance of building proposed to be demolished, where, during three-day public hearing, mayor's agent took extensive testimony with respect to historic nature of building and where agent received substantial number of written comments many of which focused on building's historical significance. D.C. Code 1980 Supp. §§ 5-821(a), (b)(2), 5-822(j, k), 5-824(e). *Citizens Committee to Save Historic Rhodes Tavern v. District of Columbia Dep't of Housing etc.*, 432 A.2d 710, 1981 D.C. App. LEXIS 304 (1981), writ of certiorari denied by 454 U.S. 1054, 102 S. Ct. 599, 70 L. Ed. 2d 590, 1981 U.S. LEXIS 4517, 50 U.S.L.W. 3402 (1981).

Historic Landmark and Historic District Protection Act of 1978 implicitly requires that mayor's agent weigh historical consideration underlying directive that application for demolition permit of historical landmark be denied unless there was finding that proposed project was one of special merit against special merit of the project. D.C. Code 1980 Supp. § 5-821 et seq. *Citizens Committee to Save Historic Rhodes Tavern v. District of Columbia Dep't of Housing etc.*, 432 A.2d 710, 1981 D.C. App. LEXIS 304 (1981), writ of certiorari denied by 454 U.S. 1054, 102 S. Ct. 599, 70 L. Ed. 2d 590, 1981 U.S. LEXIS 4517, 50 U.S.L.W. 3402 (1981).

In general.

Historic Landmark and Historic District Protection Act is intended to benefit general population and, thus, project to replace historic

building must similarly offer community-wide benefits. D.C. Code 1981, § 5-1002(11). *Kalorama Heights Ltd. Partnership v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 655 A.2d 865, 1995 D.C. App. LEXIS 59 (1995).

Special status of gallery's original structure as a registered historic landmark requiring an addition consistent with the original plan constituted a "special circumstance" justifying a special exception and variances for additions to the building. *United Unions, Inc. v. District of Columbia Bd. of Zoning Adjustment*, 554 A.2d 313, 1989 D.C. App. LEXIS 21 (1989).

Judicial review generally.

Citizens' association had standing to appeal decision not to grant hearing to association prior to either preliminary or final approval of application for construction permit allowing union to build on vacant land in historic area of District of Columbia where asserted injury was clash of proposed design with character of historic district and association's asserted interest in preserving integrity of historic old neighborhood was within zone of interests arguably protected by Historic Landmark and Historic District Protection Act. D.C. Code 1981, §§ 1-1510, 5-1001 et seq., 5-1007. *Dupont Circle Citizens Asso. v. Barry*, 455 A.2d 417, 1983 D.C. App. LEXIS 288 (1983).

Mootness.

Historic Preservation Review Board's (HPRB's) rejection of hotel developer's conceptual design proposal did not render moot developer's application for special exceptions and variances from the Board of Zoning Adjustment (BZA); HPRB's conceptual design reviews were not binding, and ultimate authority for approving application for construction in historic areas rested with Mayor's agent, not the HPRB, such that HPRB's approval of the plans was not required. *N. St. Follies, Ltd. P'shp v. D.C. Bd. of Zoning Adjustment*, 949 A.2d 584, 2008 D.C. App. LEXIS 260 (2008).

Restrictions on future use.

An agreement between a developer and a private historical preservation group, in which the private group promises not to file for historic designation of property under the Historic Landmark and Historic Protection Act in return for concessions by the developer, is not binding on third parties, cannot be enforced by the public at large, and, unless they include the Historic Preservation Review Board (HPRB) and Historic Preservation Office (HPO), do not reflect the opinion of the agencies that implement the public policy of the District of Columbia reflected in the Protection Act. *Embassy Real Estate Holdings, LLC v. D.C. Mayor's Agent For Historic Preservation*, 944 A.2d 1036, 2008 D.C. App. LEXIS 107 (2008).

Preservation Act did not give mayor or mayor's agent any authority to impose restrictive covenants on future use of land formerly occupied by historic landmark. D.C. Code 1981, §§ 5-1001 to 5-1015. District of Columbia Preservation League v. Department of Consumer & Regulatory Affairs, 646 A.2d 984, 1994 D.C. App. LEXIS 138 (1994), amended by 1994 D.C. App. LEXIS 166 (D.C. Sept. 20, 1994).

Mayor's agent did not have authority under Preservation Act to limit future use of site once occupied by historic landmark. D.C. Code 1981, §§ 5-1001 to 5-1015. District of Columbia Preservation League v. Department of Consumer & Regulatory Affairs, 646 A.2d 984, 1994 D.C. App. LEXIS 138 (1994), amended by 1994 D.C. App. LEXIS 166 (D.C. Sept. 20, 1994).

Safeguard of heritage.

Balancing of historic value of building against special merits of project which proposed to demolish building located within historic district and rebuild could not proceed until mayor's agent found that amenities proposed by developer were sufficient to constitute project of "special merit." Committee of 100 on Federal City v. District of Columbia Dep't of Consumer & Regulatory Affairs, 571 A.2d 195, 1990 D.C. App. LEXIS 49 (1990).

Under the Historic Landmark and Historic District Protection Act of 1978, demolition is necessary in order to construct a project of special merit whenever retention of landmark on its original site becomes economically oppressive. D.C. Code 1980 Supp. § 5-821 et seq. Citizens Committee to Save Historic Rhodes Tavern v. District of Columbia Dep't of Housing etc., 432 A.2d 710, 1981 D.C. App. LEXIS 304 (1981), writ of certiorari denied by 454 U.S. 1054, 102 S. Ct. 599, 70 L. Ed. 2d 590, 1981 U.S. LEXIS 4517, 50 U.S.L.W. 3402 (1981).

Sufficiency of evidence.

Evidence that the "stepped quality" of the block would be severely impacted by applicants' proposed alterations, and that the alterations could serve as precedent for other front parking pads that would reduce green space through berm removals, supported the denial under Historic District Protection Act of application

for curb cut and for related adjustments regarding construction of garage at rowhouse in historic district, including excavation of berm and paving of portion of front yard. Gondelman v. D.C. Dep't of Consumer & Regulatory Affairs, 789 A.2d 1238, 2002 D.C. App. LEXIS 11 (2002).

Zoning commission's finding of an historic preservation benefit of proposed planned unit development adding new wing to apartment building that was listed as historic landmark was supported by evidence that proposed wing would fulfill a historical design and be compatible in all material details with existing building, and that building owner planned to rehabilitate ground floor spaces in existing building. D.C. Code 1981, § 5-1001(a). Cathedral Park Condo. Comm. v. District of Columbia Zoning Comm'n, 743 A.2d 1231, 2000 D.C. App. LEXIS 9 (2000).

Decision of mayor's agent under Historic Landmark and Historic District Protection Act, denying townhouse owner's request for permit to put on fourth floor rooftop addition and third floor rear deck was supported by substantial evidence in the record, including Historic Preservation Review Board (HPRB) staff reports, designs and drawings submitted by owner, photographs allowed into evidence, proceedings before the HPRB, and testimony presented at hearing before mayor's agent. D.C. Code 1981, § 5-1001(b). Reneau v. District of Columbia, 676 A.2d 913, 1996 D.C. App. LEXIS 102 (1996).

In light of mayor's agent's findings that developers considered alternatives to preserve historical landmark and that they voluntarily delayed demolition proceedings until efforts to secure public funding to preserve landmark were exhausted, evidence in the record was sufficient to support mayor's agent's conclusion that issuance of demolition permit was necessary to construct project of special merit. D.C. Code 1980 Supp. §§ 5-821(b), 5-822(j, k), 5-824(e). Citizens Committee to Save Historic Rhodes Tavern v. District of Columbia Dep't of Housing etc., 432 A.2d 710, 1981 D.C. App. LEXIS 304 (1981), writ of certiorari denied by 454 U.S. 1054, 102 S. Ct. 599, 70 L. Ed. 2d 590, 1981 U.S. LEXIS 4517, 50 U.S.L.W. 3402 (1981).

§ 6-1102. Definitions.

For the purposes of this subchapter the term:

(1) "Alter" or "alteration" means:

(A) A change in the exterior appearance of a building or structure or its site, not covered by the definition of demolition, for which a permit is required;

(B) A change in any interior space that has been specifically designated as an historic landmark;

(C) The painting of unpainted masonry on a historic landmark or on a

facade restored as a condition of a permit approved pursuant to this subchapter; or

(D) Excavation or action disturbing the ground at an archaeological site listed in the District of Columbia Inventory of Historic Sites or an archaeological site identified as a contributing feature in the designation of a historic landmark or historic district.

(1A)(A) "Area median income" means:

(i) For a household of 4 persons, the area median income for a household of 4 persons in the Washington Metropolitan Statistical Area as set forth in the periodic calculation provided by the United States Department of Housing and Urban Development;

(ii) For a household of 3 persons, 90% of the area median income for a household of 4 persons;

(iii) For a household of 2 persons, 80% of the area median income for a household of 4 persons;

(iv) For a household of one person, 70% of the area median income for a household of 4 persons; and

(v) For a household of more than 4 persons, the area median income for a household of 4 persons, increased by 10% of the area median income for a family of 4 persons for each household member exceeding 4 persons;

(B) Any percentage referenced in subparagraph (A) of this paragraph shall be determined through a direct mathematical calculation not taking into account any adjustments made by the U.S. Department of Housing and Urban Development for the purposes of the programs it administers.

(2) "Commission of Fine Arts" means the United States Commission of Fine Arts established pursuant to the Act of May 17, 1910 (40 U.S.C. § 104).

(3) "Demolish" or "demolition" means the razing or destruction, entirely or in significant part, of a building or structure and includes the removal or destruction of any facade of a building or structure.

(3A) "Demolition by neglect" means neglect in maintaining, repairing, or securing an historic landmark or a building or structure in an historic district that results in substantial deterioration of an exterior feature of the building or structure or the loss of the structural integrity of the building or structure.

(4) "Design" means exterior architectural features including height, appearance, texture, color, and nature of materials.

(4A) "District of Columbia undertaking" means a project of the District of Columbia government that involves or contemplates demolition, alteration, subdivision, or new construction affecting a property owned by or under the jurisdiction of a District of Columbia agency, including an independent agency.

(5) "Historic district" means an historic district:

(A) Listed in the National Register of Historic Places as of the effective date of this subchapter;

(B) Nominated to the National Register by the State Historic Preservation Officer for the District of Columbia; or

(C) Which the State Historic Preservation Officer for the District of Columbia has issued a written determination to nominate to the National Register after a public hearing before the Historic Preservation Review Board.

(6) “Historic landmark” means a building, structure, object, or feature, and its site, or a site:

(A) Listed in the National Register of Historic Places as of the effective date of this subchapter; or

(B) Listed in the District of Columbia’s inventory of historic sites, or for which application for such listing is pending with the Historic Preservation Review Board, provided that, the Review Board shall schedule a hearing on the application within 90 days of one having been filed, and will determine within 90 days of receipt of an application pursuant to §§ 6-1104 to 6-1108 whether to list such property as a historic landmark.

(6A) “Historic Preservation Office” or “HPO” means the administrative office that serves as the staff to the Historic Preservation Review Board, State Historic Preservation Officer, and Mayor in performing functions pursuant to this subchapter.

(7) “Historic Preservation Review Board” or “Review Board” means the Board designated pursuant to § 6-1103 and pursuant to regulations promulgated by the United States Secretary of the Interior under the Historic Preservation Act of 1966 (16 U.S.C. § 470 et seq.).

(8) “Mayor” means the Mayor of the District of Columbia, or his designated agent.

(9) “National Register of Historic Places” or “National Register” means that national record of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, and culture established pursuant to the Historic Preservation Act of 1966 (16 U.S.C. § 470a).

(10) “Necessary in the public interest” means consistent with the purposes of this subchapter as set forth in § 6-1101(b) or necessary to allow the construction of a project of special merit.

(10A) “Public safety facility” means a fire station, police station, or any other building or structure owned by the District of Columbia used for public safety operations, but excludes facilities used primarily for administrative functions.

(11) “Special merit” means a plan or building having significant benefits to the District of Columbia or to the community by virtue of exemplary architecture, specific features of land planning, or social or other benefits having a high priority for community services.

(12) “State Historic Preservation Officer” or “SHPO” means the person designated by the Mayor to administer the National Register Program within the District of Columbia established pursuant to the Historic Preservation Act of 1966 (16 U.S.C. § 470 et seq.).

(13) “Subdivide” or “subdivision” means the division or assembly of land into 1 or more lots of record, including the division of any lot of record into 2 or more theoretical building sites as provided by the Zoning Regulations of the District of Columbia (11 DCMR 2516 et seq.).

(14) “Unreasonable economic hardship” means that failure to issue a permit would amount to a taking of the owner’s property without just compensation or, in the case of a low-income owner(s) as determined by the Mayor, failure to issue a permit would place an onerous and excessive financial burden upon such owner(s).

(Mar. 3, 1979, D.C. Law 2-144, § 3, 25 DCR 6939; Mar. 8, 1991, D.C. Law 8-232, § 2, 38 DCR 259; Apr. 29, 1998, D.C. Law 12-86, § 503(a), 45 DCR 1172; Apr. 27, 2001, D.C. Law 13-281, § 104(a), 48 DCR 1888; June 19, 2001, D.C. Law 13-313, § 9, 48 DCR 1873; Mar. 16, 2005, D.C. Law 15-228, § 2(a), 51 DCR 10562; Nov. 16, 2006, D.C. Law 16-185, § 2(b), 53 DCR 6712; Mar. 2, 2007, D.C. Law 16-189, § 2(a), 53 DCR 6786; Mar. 25, 2009, D.C. Law 17-353, § 126, 56 DCR 1117.)

Prior Codifications. — 1981 Ed., § 5-1002. 1973 Ed., § 5-822.

Effect of amendments. — D.C. Law 13-281 added subsec. (3A).

D.C. Law 13-313 validated a previously made technical amendment.

D.C. Law 15-228 added par. (10A).

D.C. Law 16-185 rewrote par. (1); in par. (3A), inserted “substantial” preceding “deterioration”; added pars. (4A) and (6A); in par. (6)(B), deleted “pursuant to the procedures contained in § 6-1103(c)(5)” following “landmark”; and, in par. (12), inserted “or “SHPO”. Prior to amendment, par. (1) read as follows: “(1) ‘Alter’ or ‘alteration’ means a change in the exterior appearance of a building or structure or its site, not covered by the definition of demolition, for which a permit is required; except, that “alter” or “alteration” also means a change in any interior space which has been specifically designated as an historic landmark.”

D.C. Law 16-189 added par. (1A).

D.C. Law 17-353 made technical corrections in the designation of paragraphs and subparagraphs.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(a) of Historic Preservation Process for Public Safety Facilities Emergency Amendment Act of 2004 (D.C. Act 15-502, August 2, 2004, 51 DCR 8817).

For temporary (90 day) amendment of section, see § 2(a) of Historic Preservation Process for Public Safety Facilities Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-595, November 30, 2004, 51 DCR 11215).

For temporary (90 day) amendment of section, see § 2(a) of Historic Preservation Process for Public Safety Facilities Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-24, February 17, 2005, 52 DCR 2978).

For temporary (90 day) amendment of section, see §§ 2(a), 4 of Targeted Historic Preservation Assistance Emergency Amendment Act of 2006 (D.C. Act 16-472, July 31, 2006, 53 DCR 6781).

For temporary (90 day) amendment of section, see § 2(a) of Targeted Historic Preservation Assistance Congressional Review Emergency Act of 2006 (D.C. Act 16-500, October 23, 2006, 53 DCR 9046).

Legislative history of Law 2-144. — For legislative history of D.C. Law 2-144, see Historical and Statutory Notes following § 6-1101.

Legislative history of Law 8-232. — Law 8-232, the “Historic Landmark and Historic District Protection Amendment Act of 1990,” was introduced in Council and assigned Bill No. 8-274, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-315 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-86. — Law 12-86, the “Omnibus Regulatory Reform Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-458, which was referred to the Committee on Public Works and the Environment and the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 19, 1997, and January 6, 1998, respectively. Signed by the Mayor on January 21, 1998, it was assigned Act No. 12-256 and transmitted to both Houses of Congress for its review. D.C. Law 12-86 became effective on April 29, 1998.

Legislative history of Law 13-281. — For D.C. Law 13-281, see notes following § 6-801.

Legislative history of Law 13-313. — Law 13-313, the “Technical Amendments Act of 2000”, was introduced in Council and assigned Bill No. 13-879, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 2000, and December 19, 2000, respectively. Signed by the Mayor on January 19, 2001, it was assigned Act No. 13-574 and transmitted to Both Houses of Congress for its review. D.C. Law 13-313 became effective on June 19, 2001.

Legislative history of Law 15-228. — Law 15-228, the “Historic Preservation Process for Public Safety Facilities Amendment Act of 2004”, was introduced in Council and assigned Bill No. 15-784, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on July 13, 2004, and October 5, 2004, respectively. Signed by the Mayor on October 26, 2004, it was assigned Act No. 15-568 and transmitted to both Houses of Congress for its review. D.C. Law 15-228 became effective on March 16, 2005.

Legislative history of Law 16-185. — For Law 16-185, see notes following § 6-1101.

Legislative history of Law 16-189. — Law 16-189, the “Targeted Historic Preservation Assistance Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-300, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 2, 2006, and June 6, 2006, respectively. Signed by the Mayor on July 31, 2006, it was assigned Act No. 16-473 and transmitted to both Houses of Congress for its review. D.C. Law 16-189 became effective on March 2, 2007.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 6-201.

Editor’s notes. — Because of the codification of D.C. Law 5-69 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 11 as subchapter I, “subchapter” has been substituted for “chapter,” where applicable, in this section.

Applicability: Section 4 of D.C. Law 16-189 provided: “The implementation of the provisions of this act is subject to appropriations and nothing in this act shall be construed to create an entitlement.”

CASE NOTES

ANALYSIS

Actions and proceedings generally.
 Administrative procedure.
 Alteration.
 Historic landmarks.
 —Constitutional rights, historic landmarks.
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 Validity.

Actions and proceedings generally.

Trustees for beneficial owners of property as to which application for designation as historic landmark had been filed had standing to challenge continuing validity of the application as they alleged a threat of injury, in that under District of Columbia law the filing of an application automatically requires that the property be treated as a landmark pending resolution of the application and an application requires the owner to make a special showing of public interest or economic hardship to obtaining a permit for alteration or demolition and trustees had filed application for permit to alter an exterior doorway. D.C. Code 1981, § 5-1002(6)(B). *Weinberg v. Barry*, 604 F. Supp. 390, 1985 U.S. Dist. LEXIS 21986 (1985).

Doctrine of laches did not preclude Mayor’s Agent for Historic Preservation (Mayor’s Agent) from denying pre-construction and construction permits that developer had applied for on former embassy before Historic Preservation Office (HPO) filed application for landmark designation of the embassy, despite developer’s argument that the application for landmark designation was filed too late given that design for the project was well underway

and that developer had been impliedly given a green light by historic preservation officer, as the Mayor’s Agent’s authority was limited to review of developer’s permit applications in accordance with the Historic Landmark and Historic Protection Act, Mayor’s Agent did not have authority to review the Historic Preservation Review Board’s (HPRB) landmark designation itself, and developer’s argument for the application of laches was more appropriately addressed to the HPRB. *Embassy Real Estate Holdings, LLC v. D.C. Mayor’s Agent For Historic Preservation*, 944 A.2d 1036, 2008 D.C. App. LEXIS 107 (2008).

The Historic Landmark and Historic Protection Act did not bar the Historic Preservation Review Board (HPRB) and the Mayor’s Agent for Historic Preservation (Mayor’s Agent) from asserting jurisdiction to review developer’s applications for pre-construction and construction permits which were pending with the Department of Consumer and Regulatory Affairs (DCRA) before the Historic Preservation Office’s (HPO) filed its application for landmark designation of the embassy; the Protection Act’s definition of “historic landmark” included a building for which an application for landmark designation was pending before the HPRB, and thus former embassy was protected by the Act on the date HPO filed its application. *Embassy Real Estate Holdings, LLC v. D.C. Mayor’s Agent For Historic Preservation*, 944 A.2d 1036, 2008 D.C. App. LEXIS 107 (2008).

Genuine issue of material fact existed as to effect of pending application for expansion of historic district on market value of taxpayer’s property, precluding summary judgment in action to review tax assessment. D.C. Code 1981, §§ 5-1002(5)(B, C), 5-1003 to 5-1007. 1827 M Street, Inc. v. District of Columbia, 537 A.2d 1078, 1988 D.C. App. LEXIS 8 (1988).

Administrative procedure.

Failure of interim committee composed of private citizens to comply with statutory requirement to act within 90 days on permit

application requesting designation of building's exterior as historic landmark did not forever prohibit successor, government agency review board, from designating exterior of building as historic landmark in accordance with statute which requires agency to act upon permit application for historic landmark status within 90 days. D.C. Code 1981, §§ 5-1001 to 5-1015, 5-1003(a), 5-1004(e), 5-1005(f). *Weinberg v. Barry*, 634 F. Supp. 86, 1986 U.S. Dist. LEXIS 28132 (1986).

When mayor's agent's decision regarding application to make improvements in historic district is based on interpretation of statute and regulations the mayor's agent administers, that interpretation will be sustained unless shown to be unreasonable or in contravention of language of legislative history of the Historic District Protection Act. *Gondelman v. D.C. Dep't of Consumer & Regulatory Affairs*, 789 A.2d 1238, 2002 D.C. App. LEXIS 11 (2002).

Mayor's agent did not fail to apply appropriate standard under Historic Landmark and Historic District Protection Act of 1978 before authorizing demolition permit where, although decision appeared to turn most exclusively on finding that proposed project was of special merit, agent considered historical significance of building proposed to be demolished, where, during three-day public hearing, mayor's agent took extensive testimony with respect to historic nature of building and where agent received substantial number of written comments many of which focused on building's historical significance. D.C. Code 1980 Supp. §§ 5-821(a), (b)(2), 5-822(j, k), 5-824(e). *Citizens Committee to Save Historic Rhodes Tavern v. District of Columbia Dep't of Housing etc.*, 432 A.2d 710, 1981 D.C. App. LEXIS 304 (1981), writ of certiorari denied by 454 U.S. 1054, 102 S. Ct. 599, 70 L. Ed. 2d 590, 1981 U.S. LEXIS 4517, 50 U.S.L.W. 3402 (1981).

Historic Landmark and Historic District Protection Act of 1978 implicitly requires that mayor's agent weigh historical consideration underlying directive that application for demolition permit of historical landmark be denied unless there was finding that proposed project was one of special merit against special merit of the project. D.C. Code 1980 Supp. § 5-821 et seq. *Citizens Committee to Save Historic Rhodes Tavern v. District of Columbia Dep't of Housing etc.*, 432 A.2d 710, 1981 D.C. App. LEXIS 304 (1981), writ of certiorari denied by 454 U.S. 1054, 102 S. Ct. 599, 70 L. Ed. 2d 590, 1981 U.S. LEXIS 4517, 50 U.S.L.W. 3402 (1981).

Alteration.

Mayor's agent could consider not only proposed changes to the rowhouse, but also the entire site, when considering under Historic District Protection Act whether the alterations

proposed in application for curb cut and for related adjustments regarding construction of garage at rowhouse in historic district, including excavation of berm and paving of portion of front yard, were compatible and consistent with character of the historic district. *Gondelman v. D.C. Dep't of Consumer & Regulatory Affairs*, 789 A.2d 1238, 2002 D.C. App. LEXIS 11 (2002).

Mayor's agent and Historic Preservation Review Board (HPRB) could look to District of Columbia's comprehensive plan, mandating that "landscaped green space on publicly owned, privately maintained front and side yards in historic districts and on historic landmarks should be preserved," when determining under Historic District Protection Act whether approval should be given for application for curb cut and for related adjustments regarding construction of garage at rowhouse in historic district, including excavation of berm and paving of portion of front yard. *Gondelman v. D.C. Dep't of Consumer & Regulatory Affairs*, 789 A.2d 1238, 2002 D.C. App. LEXIS 11 (2002).

Original north wall of historic firehouse, which had been enclosed by an addition before building was designated as historic landmark, was not subject to provisions of Preservation Act, which covered only exterior structures, or at least substantial demolition including exterior structures of a historic landmark. D.C. Code 1981, § 5-1002(1). *District of Columbia Preservation League v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 711 A.2d 1273, 1998 D.C. App. LEXIS 111 (1998).

The term "alteration" as used in statute requiring approval of Fine Arts Commission for the "erection or alteration" of any building within the regulated area of the nation's capital means change in the sense of adding to, remodeling or reconstruction. 40 U.S.C. § 121; D.C. Code §§ 5-410, 5-802. *Commissioner of District of Columbia v. Benenson*, 329 A.2d 437, 1974 D.C. App. LEXIS 323 (1974).

Historic landmarks.

— Constitutional rights, historic landmarks.

Automatic imposition of landmark status, as effected on filing of a designation application under District of Columbia law, with such status continuing until Review Board acts on the petition or until 90 days passes without a decision following filing of an application for alteration or demolition work does not violate a building owner's due process rights. D.C. Code 1981, § 5-1002(6)(B); U.S. Const. Amends. 5, 14. *Weinberg v. Barry*, 604 F. Supp. 390, 1985 U.S. Dist. LEXIS 21986 (1985).

Burden imposed on property owner under District of Columbia statute providing that mere filing of an application for landmark des-

ignation automatically requires that the property be treated as a landmark pending resolution of the application and requiring owner to make a special showing of public interest to economic hardship to opt any permit for alteration or demolition does not rise to constitutional portions. D.C. Code 1981, § 5-1002(6)(B). *Weinberg v. Barry*, 604 F. Supp. 390, 1985 U.S. Dist. LEXIS 21986 (1985).

Provision in Historic Landmark and Historic Protection Act, allowing permits to be issued for historic properties even if a proposed development is fundamentally inconsistent with the goal of historic preservation if denying the permits would result in "unreasonable economic hardship," incorporates the Fifth Amendment's protection against the taking of property without fair compensation. *Embassy Real Estate Holdings, LLC v. D.C. Mayor's Agent For Historic Preservation*, 944 A.2d 1036, 2008 D.C. App. LEXIS 107 (2008).

— Determination by board, historic landmarks.

Permit filed by lessee to designate interior of building as historic landmark did not comply with requirement that owner file application and, therefore, did not trigger running of 90-day period for review board's action. D.C. Code 1981, § 5-1002(6)(B). *Weinberg v. Barry*, 634 F. Supp. 86, 1986 U.S. Dist. LEXIS 28132 (1986).

Landmark designation of exterior of District of Columbia building was set aside under authority of statute requiring that when an application is filed the entity implementing the act will determine within 90 days of receipt of application for an alteration/demolition permit whether to list the property as an historic landmark where application had been filed for permit to modify exterior doorway and decision to designate the exterior as a landmark was not promulgated until more than 90 days after that filing. D.C. Code 1981, § 5-1002(6)(B). *Weinberg v. Barry*, 604 F. Supp. 390, 1985 U.S. Dist. LEXIS 21986 (1985).

The 90-day period in which Joint Committee on Landmarks of the National Capital was required to accept or reject application to designate exterior of D.C. building as landmark, in face of permit by owners to modify exterior doorway, could not be avoided on ground that through administrative oversight the modification permit application filed with the appropriate D.C. licensing agency was never transmitted to or "received" by the Joint Committee. D.C. Code 1981, § 5-1002(6)(B). *Weinberg v. Barry*, 604 F. Supp. 390, 1985 U.S. Dist. LEXIS 21986 (1985).

Where decision of Joint Committee on Landmarks of the National Capital designating exterior of D.C. building as landmark was untimely because filing more than 90 days after permit to modify exterior doorway, any future

applications for permits to alter or demolish the exterior could be filed with, considered by and acted on by Department of Licenses without any referral to Review Board or Office of the Mayor, that is, unless and until another landmark application was filed. D.C. Code 1981, § 5-1002(6)(B). *Weinberg v. Barry*, 604 F. Supp. 390, 1985 U.S. Dist. LEXIS 21986 (1985).

Ninety-day period within which Historic Preservation Review Board (HPRB) was required to make a decision on application for landmark designation of former embassy under the Historic Landmark and Historic Protection Act, applicable when applications for landmark designation were filed after permit applications were filed, began to run on date Historic Preservation Office (HPO) filed the application, rather than on date that developer filed its applications for pre-construction and construction permits with the Department of Consumer and Regulatory Affairs (DCRA). *Embassy Real Estate Holdings, LLC v. D.C. Mayor's Agent For Historic Preservation*, 944 A.2d 1036, 2008 D.C. App. LEXIS 107 (2008).

Ninety-day period within which District of Columbia Historic Preservation Review Board must list property as historic landmark after "receipt" of property owner's demolition or alteration permit application begins to run when Department of Licenses receives permit application, not when Board itself receives it. D.C. Code 1981, § 5-1002(6)(B). *Donnelly Associates v. District of Columbia Historic Preservation Review Bd.*, 520 A.2d 270, 1987 D.C. App. LEXIS 270 (1987).

— In general.

Description in the D.C. inventory of historic sites of street vista was so flawed that it was impossible to know what was described; therefore, the District of Columbia Historic Landmark and Historic District Protection Act did not apply to construction of international trade center on portion of that street and mayor was not required to refer all future construction permits for the international trade center to the Historic Preservation Review Board for its comments. D.C. Code 1981, §§ 5-1001 et seq., 5-1002(6), 5-1005(b). *Techworld Dev. Corp. v. D.C. Preservation League*, 648 F. Supp. 106, 1986 U.S. Dist. LEXIS 21851 (1986), vacated by, remanded by 1987 U.S. App. LEXIS 18346 (D.C. Cir. June 2, 1987).

Judicial review.

In appeals concerning the Historic Landmark and Historic Protection Act, the Court of Appeals defers to the expertise of the Mayor's Agent for Historic Preservation (Mayor's Agent) and the Historic Preservation Review Board (HPRB) as to what constitutes "special merit" sufficient to justify subdivision, demolition or alteration, and what is "incompatible,"

in the case of new construction, related to historic properties. *Embassy Real Estate Holdings, LLC v. D.C. Mayor's Agent For Historic Preservation*, 944 A.2d 1036, 2008 D.C. App. LEXIS 107 (2008).

When a decision by the Mayor's Agent for Historic Preservation (Mayor's Agent) is based on an interpretation of the statute and regulations it administers, that interpretation will be sustained on appeal unless shown to be unreasonable. *Embassy Real Estate Holdings, LLC v. D.C. Mayor's Agent For Historic Preservation*, 944 A.2d 1036, 2008 D.C. App. LEXIS 107 (2008).

Court of Appeals' review of a decision by Mayor's Agent for Historic Preservation (Mayor's Agent) under the Historic Landmark and Historic Protection Act is limited and narrow; the Mayor's Agent's decision must be upheld if the findings of fact are supported by substantial evidence in the record considered as a whole and the conclusions of law flow rationally from these findings. *Embassy Real Estate Holdings, LLC v. D.C. Mayor's Agent For Historic Preservation*, 944 A.2d 1036, 2008 D.C. App. LEXIS 107 (2008).

Necessary in the public interest.

Mayor's agent did not apply Historic Landmark and Historic District Protection Act unreasonably in ruling that townhouse owner failed to show that proposed changes were at all necessary to encourage adaptation of structure for current use. D.C. Code 1981, §§ 5-1001(b), 5-1002(10). *Reneau v. District of Columbia*, 676 A.2d 913, 1996 D.C. App. LEXIS 102 (1996).

Mayor's agent did not have authority to permit demolition of historical landmark under Preservation Act's "necessary in the public interest" standard, based on factors such as cost of refurbishing dilapidated structure and threat it posed to safety and welfare of community. D.C. Code 1981, § 5-1004(e). *District of Columbia Preservation League v. Department of Consumer & Regulatory Affairs*, 646 A.2d 984, 1994 D.C. App. LEXIS 138 (1994), amended by 1994 D.C. App. LEXIS 166 (D.C. Sept. 20, 1994).

Special merit.

Developer seeking demolition permit for property protected under Historic Landmark and Historic District Protection Act failed to establish that its project had social or other benefits that differed from those of any other condominium projects, or that developer had considered reasonable alternatives to complete demolition and, thus, Mayor's Agent's decision finding no "special merit" was not erroneous, and Mayor's Agent was not required to weigh historic value of property against proposed benefits of condominium project. D.C. Code 1981, §§ 5-1002(11), 5-1004(e). *Kalorama Heights*

Ltd. Partnership v. District of Columbia Dep't of Consumer & Regulatory Affairs, 655 A.2d 865, 1995 D.C. App. LEXIS 59 (1995).

Mayor's Agent is not required to carry out balancing analysis weighing historical significance of property protected under Historic Landmark and Historic District Protection Act against benefits of proposed project unless Agent finds that project has "special merit." D.C. Code 1981, §§ 5-1002(11), 5-1004(e). *Kalorama Heights Ltd. Partnership v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 655 A.2d 865, 1995 D.C. App. LEXIS 59 (1995).

To justify demolishing historic building based on project's "special merit," applicant must show that it has considered alternatives to complete demolition. D.C. Code 1981, §§ 5-1002(11), 5-1004(e). *Kalorama Heights Ltd. Partnership v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 655 A.2d 865, 1995 D.C. App. LEXIS 59 (1995).

For purposes of criterion for "special merit" in support of issuance of demolition permit for historic building, requiring "social and other benefits having a high priority for community services," project such as office buildings or luxury condominiums, while generally beneficial to community, more specifically benefit occupants and cannot, as such, be viewed as adequate compensation for historic building taken away from community as whole but, rather, something more is required; Historic Landmark and Historic District Protection Act is intended to benefit general population and, thus, project to replace historic building must similarly offer community-wide benefits, and phrase "high priority for community services" make it clear that offered benefits must be for community at large. D.C. Code 1981, § 5-1002(11). *Kalorama Heights Ltd. Partnership v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 655 A.2d 865, 1995 D.C. App. LEXIS 59 (1995).

Proposed project featuring benefits to occupants of new buildings, coupled with general benefits to district, such as increased tax revenues or increased housing stock, are not sufficiently special to come within clause of Historic Landmark and Historic District Protection Act identifying "special merit" justifying issuance of demolition permit as "social or other benefits having a high priority for community services." D.C. Code 1981, § 5-1002(11). *Kalorama Heights Ltd. Partnership v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 655 A.2d 865, 1995 D.C. App. LEXIS 59 (1995).

Even if proposed housing and day-care components of new building that was to replace building in historic district could be found to meet standards required for project of "special merit" to justify demolition of existing building, mayor's agent failed to respond to material and

relevant objections that housing and day-care amenities could be provided in renovated building and that proposals were lacking any details to demonstrate their feasibility, particularly as comprehensive plan could not be factored into support for proposed new building. Committee of 100 on Federal City v. District of Columbia Dep't of Consumer & Regulatory Affairs, 571 A.2d 195, 1990 D.C. App. LEXIS 49 (1990).

In determining whether proposed rebuilding was of "special merit" that would justify demolishing building within historic district and rebuilding, feasibility of amenities of proposed new building was legitimate consideration. Committee of 100 on Federal City v. District of Columbia Dep't of Consumer & Regulatory Affairs, 571 A.2d 195, 1990 D.C. App. LEXIS 49 (1990).

Evidence would not support conclusion that residential housing and day-care services which were to be included in new building that was to replace demolished building in historic district were feasible, so as to support finding special merit in proposed rebuilding justifying demolition of building within historic district. Committee of 100 on Federal City v. District of Columbia Dep't of Consumer & Regulatory Affairs, 571 A.2d 195, 1990 D.C. App. LEXIS 49 (1990).

Factors that government stands to gain tax revenues from development of alleged historical property site and that development project would create new jobs are factors militating in favor of special merit of project and is a proper consideration in reviewing grant of a demolition permit to raze a historical landmark. D.C. Code 1980 Supp. § 5-822(k). Citizens Committee to Save Historic Rhodes Tavern v. District of Columbia Dep't of Housing etc., 432 A.2d 710, 1981 D.C. App. LEXIS 304 (1981), writ of certiorari denied by 454 U.S. 1054, 102 S. Ct. 599, 70 L. Ed. 2d 590, 1981 U.S. LEXIS 4517, 50 U.S.L.W. 3402 (1981).

Subdivision.

Acting surveyor's interpretation of word "subdivision" in Historic Landmark and Historic District Protection Act was not "rule" for purposes of District of Columbia Administrative Procedure Act. D.C. Code 1981, §§ 5-1001 et seq., 1-1501 et seq. Acheson v. Sheaffer, 520 A.2d 318, 1987 D.C. App. LEXIS 279 (1987).

Division of several property lots and their subsequent combination into two lots of record did not constitute "subdivision" within meaning of Historic Landmark and Historic District Protection Act. D.C. Code 1981, § 5-1001 et seq. Acheson v. Sheaffer, 520 A.2d 318, 1987 D.C. App. LEXIS 279 (1987).

Sufficiency of evidence.

Decision by Mayor's Agent for Historic Preservation, that developer had not demonstrated

compatibility with Historic Landmark and Historic Protection Act, or special merit or unreasonable economic hardship, sufficient to warrant issuance of permits for proposed development on property of former embassy that had received a landmark designation, was not arbitrary or capricious, and was supported by substantial evidence; developer proposed to demolish one-fourth of former embassy, proposed new tower conflicted with embassy's existing design, there was evidence that property had not lost any reasonable economic use as developer retained a permit to subdivide and had possible option of relocating tower, and there was evidence that developer's reasonable investment-backed expectations were not thwarted, as developer was aware before it invested in the proposed development that if landmark application was filed it would probably be granted. Embassy Real Estate Holdings, LLC v. D.C. Mayor's Agent For Historic Preservation, 944 A.2d 1036, 2008 D.C. App. LEXIS 107 (2008).

Evidence that the "stepped quality" of the block would be severely impacted by applicants' proposed alterations, and that the alterations could serve as precedent for other front parking pads that would reduce green space through berm removals, supported the denial under Historic District Protection Act of application for curb cut and for related adjustments regarding construction of garage at rowhouse in historic district, including excavation of berm and paving of portion of front yard. Gondelman v. D.C. Dep't of Consumer & Regulatory Affairs, 789 A.2d 1238, 2002 D.C. App. LEXIS 11 (2002).

In proceeding on property owner's application for a demolition permit to demolish building under the Historic Landmark and Historic District Protection Act, evidence was sufficient to sustain findings by mayor's agent that the demolition permit was not necessary to avoid unreasonable economic hardship, and that owner's alternative proposal was not a project of special merit. D.C. Code 1981, §§ 5-1002(10), 5-1004(e). MB Associates v. D.C. Dep't of Licenses, Investigation & Inspection, 456 A.2d 344, 1982 D.C. App. LEXIS 520 (1982).

In light of mayor's agent's findings that developers considered alternatives to preserve historical landmark and that they voluntarily delayed demolition proceedings until efforts to secure public funding to preserve landmark were exhausted, evidence in the record was sufficient to support mayor's agent's conclusion that issuance of demolition permit was necessary to construct project of special merit. D.C. Code 1980 Supp. §§ 5-821(b), 5-822(j, k), 5-824(e). Citizens Committee to Save Historic Rhodes Tavern v. District of Columbia Dep't of Housing etc., 432 A.2d 710, 1981 D.C. App. LEXIS 304 (1981), writ of certiorari denied by 454 U.S. 1054, 102 S. Ct. 599, 70 L. Ed. 2d 590,

1981 U.S. LEXIS 4517, 50 U.S.L.W. 3402 (1981).

Unreasonable economic hardship.

— In general.

Applicant for permit to demolish historic building on ground of “unreasonable economic hardship” resulting from denial of demolition permit has burden of proving that no reasonable alternative economic use for property exists and, thus, applicant must show that it would be deprived of all viable economic uses of property without demolition permit. D.C. Code 1981, §§ 5-1002(14), 5-1004(e). *Kalorama Heights Ltd. Partnership v. District of Columbia Dep’t of Consumer & Regulatory Affairs*, 655 A.2d 865, 1995 D.C. App. LEXIS 59 (1995).

Developer seeking demolition permit for historic building in order to proceed with condominium project failed to demonstrate “unreasonable economic hardship” in denial of permit, as it failed to show that value of building had declined from time of purchase or that no other economically viable use existed; prior to purchasing building, developer knew that there was strong preservationist trend in area and its own counsel had advised that there was only 50 percent chance of obtaining required zoning variances for condominium project, and while argument that renovation of property as a single-family structure would be unprofitable was accepted, various chanceries had made unsolicited offers for building, and one of developer’s partners had testified that he believed developer could recover its purchase price by spending “a little bit of money.” D.C. Code 1981, §§ 5-1002(14), 5-1004(e). *Kalorama Heights Ltd. Partnership v. District of Columbia Dep’t of Consumer & Regulatory Affairs*, 655 A.2d 865, 1995 D.C. App. LEXIS 59 (1995).

Conclusion that renovation of building in historic district, instead of demolition and rebuilding, was not economically feasible was not supported by mayor’s agent’s findings of fact; agent found that if building were renovated, return would be approximately 7.32%, projected yield for typical downtown commercial income producing properties was 7 to 9%, and building owner admitted that modest return on building was being received. *Committee of 100 on Federal City v. District of Columbia Dep’t of Consumer & Regulatory Affairs*, 571 A.2d 195, 1990 D.C. App. LEXIS 49 (1990).

— Takings, unreasonable economic hardship.

For purpose of regulatory takings claim, a reasonable investment-backed expectation must be more than a unilateral expectation or an abstract need; claimants cannot establish a takings claim simply by showing that they have been denied the ability to exploit a property interest that they heretofore had believed was

available for development. U.S. Const. Amend. 5. *District Intown Props. Ltd. Pshp. v. District of Columbia*, 198 F.3d 874, 1999 U.S. App. LEXIS 32701 (C.A.D.C. 1999), writ of certiorari denied by 531 U.S. 812, 121 S. Ct. 34, 148 L. Ed. 2d 14, 2000 U.S. LEXIS 4890, 69 U.S.L.W. 3224 (2000).

In assessing a regulation’s economic impact on the claimant, its interference with the claimant’s reasonable investment-backed expectations, and the character of the government action, for purpose of regulatory takings claim, the effect of the regulation must be measured on the parcel as a whole. U.S. Const. Amend. 5. *District Intown Props. Ltd. Pshp. v. District of Columbia*, 198 F.3d 874, 1999 U.S. App. LEXIS 32701 (C.A.D.C. 1999), writ of certiorari denied by 531 U.S. 812, 121 S. Ct. 34, 148 L. Ed. 2d 14, 2000 U.S. LEXIS 4890, 69 U.S.L.W. 3224 (2000).

For purpose of property owner’s claim that District of Columbia engaged in taking without just compensation, by denying building permits for properties that were subdivided from lawn of owner’s apartment building property, relevant parcel consisted of property as a whole, including apartment building lot and all of subdivided lots, not individual subdivided lots, as lots were spatially and functionally contiguous. U.S. Const. Amend. 5. *District Intown Props. Ltd. Pshp. v. District of Columbia*, 198 F.3d 874, 1999 U.S. App. LEXIS 32701 (C.A.D.C. 1999), writ of certiorari denied by 531 U.S. 812, 121 S. Ct. 34, 148 L. Ed. 2d 14, 2000 U.S. LEXIS 4890, 69 U.S.L.W. 3224 (2000).

Denial of owner’s request for permits to build on parcels that were subdivided from lawn of apartment building property did not render property valueless, as required to establish total taking, even if subdivided parcels were considered separately from apartment building parcel, absent evidence that lawns’ economic value was totally destroyed or evidence of parcels’ fair market value after permits were denied. U.S. Const. Amend. 5. *District Intown Props. Ltd. Pshp. v. District of Columbia*, 198 F.3d 874, 1999 U.S. App. LEXIS 32701 (C.A.D.C. 1999), writ of certiorari denied by 531 U.S. 812, 121 S. Ct. 34, 148 L. Ed. 2d 14, 2000 U.S. LEXIS 4890, 69 U.S.L.W. 3224 (2000).

Denial of owner’s request for permits to build on parcels that were subdivided from lawn of apartment building property did not amount to regulatory taking that would require just compensation, where there was no evidence that parcel as a whole was thereby unprofitable to maintain, and owner could not have had any reasonable investment-backed expectations of development given background regulatory structure at time of subdivision. U.S. Const. Amend. 5. *District Intown Props. Ltd. Pshp. v. District of Columbia*, 198 F.3d 874, 1999 U.S. App. LEXIS 32701 (C.A.D.C. 1999),

writ of certiorari denied by 531 U.S. 812, 121 S. Ct. 34, 148 L. Ed. 2d 14, 2000 U.S. LEXIS 4890, 69 U.S.L.W. 3224 (2000).

Denial of permits for construction of townhouses on lots which had been subdivided from lawn of apartment building property which was designated as an historic landmark did not constitute a partial, compensable, taking; denial of permits was aimed at promoting congressionally recognized public interest, denial did not interfere unnecessarily with investment-backed expectations as property had been maintained by same owners as one unified lot for roughly 25 years and there was no claim that original purchase was in any way motivated by expectations concerning development of the lawn, owners were on notice that their property was subject to designation as an historic landmark, owners did not argue that the present arrangement did not yield a reasonable return, and there was synergistic value created by the building and the lawn. U.S. Const. Amend. 5; D.C. Code 1981, §§ 5-410, 5-1002, 5-1007, 5-4101. District Intown Props. Ltd. Pshp. v. District of Columbia, 23 F.Supp.2d 30, 1998 U.S. Dist. LEXIS 15427 (1998), affirmed by 198 F.3d 874, 339 U.S. App. D.C. 127, 1999 U.S. App. LEXIS 32701, 49 Env't Rep. Cas. (BNA) 1838 (1999).

Fact that filing of application for landmark designation under District of Columbia law automatically requires the owner to make a special showing of public interest or economic hardship to obtain a permit or alteration for demolition does not constitute an unconstitutional taking as burden is susceptible to owners' control in that its duration can be limited through filing of a permit application for demolition or alteration. D.C. Code 1981, § 5-1002(6)(B); U.S. Const. Amend. 5. Weinberg v. Barry, 604 F. Supp. 390, 1985 U.S. Dist. LEXIS 21986 (1985).

Requiring parties to spend substantial sums of money to preserve landmark structures with little or no public assistance could rise to level of unconstitutional taking. D.C. Code 1980 Supp. § 5-821 et seq.; U.S. Const. Amendments. 5, 14. Citizens Committee to Save Historic Rhodes Tavern v. District of Columbia Dep't of Housing etc., 432 A.2d 710, 1981 D.C. App. LEXIS 304 (1981), writ of certiorari denied by 454 U.S. 1054, 102 S. Ct. 599, 70 L. Ed. 2d 590, 1981 U.S. LEXIS 4517, 50 U.S.L.W. 3402 (1981).

Inclusion of building within protection of the Historic Landmark and the Historic District Protective Act of 1978 and denial of permit to demolish building did not constitute an unconstitutional "taking" from building's owners where there was a reasonable alternative economic use for building after imposition of restriction on building, despite fact that cash value of building was unquestionably dimin-

ished. D.C. Code 1980 Supp. § 5-821 et seq. 900 G. 900 G Street Associates v. Department of Housing & Community Dev., 430 A.2d 1387, 1981 D.C. App. LEXIS 308 (1981).

If there is a reasonable alternative economic use for property after imposition of restriction on that property, there is no taking, and hence no unreasonable economic hardship to owners, no matter how diminished property may be in cash value and no matter if "higher" or "more beneficial" uses of property have been proscribed. 900 G. 900 G Street Associates v. Department of Housing & Community Dev., 430 A.2d 1387, 1981 D.C. App. LEXIS 308 (1981).

Validity.

Automatic imposition of landmark status on a District of Columbia building on filing of landmark application by a third party, such as a nonprofit corporation interested in landmark preservation, does not constitute an impermissible delegation of legislative power in that although third parties may choose to initiate the process, it is the Historic Preservation Review Board that is implementing the act. National Capital Planning Act of 1952, § 2, 40 U.S.C. § 71a; Fine Arts Commission Act, § 1, 40 U.S.C. § 104; D.C. Code 1981, § 5-1002(6)(B). Weinberg v. Barry, 604 F. Supp. 390, 1985 U.S. Dist. LEXIS 21986 (1985).

Although developer arguably waived claim that statutory definition of "special merit," which developer was required to show in order to obtain demolition permit for historic building, was unconstitutionally vague by failing to present argument before Mayor's Agent, developer's challenge was not procedural and was not barred by state law and, thus, Court of Appeals was not precluded from considering it, and would choose to do so, as record was adequate and parties had joined issue. D.C. Code 1981, § 5-1002(11). Kalorama Heights Ltd. Partnership v. District of Columbia Dep't of Consumer & Regulatory Affairs, 655 A.2d 865, 1995 D.C. App. LEXIS 59 (1995).

Criterion for showing "special merit" in support of application for demolition permit for historic building, that proposed project will confer "social and other benefits having a high priority for community services," is not unconstitutionally vague; provision was not standardless, given purposes of Historic Landmark and Historic District Protection Act, context in which Act was applied to developer seeking to demolish historic building in order construct condominium project, and judicial decisions clarifying meaning of provision. U.S.C. Const. Amend. 14; D.C. Code 1981, § 5-1002(11). Kalorama Heights Ltd. Partnership v. District of Columbia Dep't of Consumer & Regulatory Affairs, 655 A.2d 865, 1995 D.C. App. LEXIS 59 (1995).

Historic Landmark and Historic District Protection Act of 1978 was not impermissibly vague in that phrase "exemplary architecture," which was basis for finding of special merit of development project in order to approve permit for demolition of historic landmark, was delegation of authority to mayor's agent without standard where mayor's agent was required to consider objective factors in weighing a claim of special merit based on exemplary architecture

and, in present action, detailed architectural drawings and descriptions fully comporting with objective factors were submitted. D.C. Code 1980 Supp. §§ 5-821 et seq., 5-822(k). Citizens Committee to Save Historic Rhodes Tavern v. District of Columbia Dep't of Housing etc., 432 A.2d 710, 1981 D.C. App. LEXIS 304 (1981), writ of certiorari denied by 454 U.S. 1054, 102 S. Ct. 599, 70 L. Ed. 2d 590, 1981 U.S. LEXIS 4517, 50 U.S.L.W. 3402 (1981).

§ 6-1103. Historic Preservation Review Board.

(a) The Mayor is authorized to establish an Historic Preservation Review Board comprised of nine members who shall be confirmed by the Council of the District of Columbia. The Review Board shall be constituted and its members qualified so as to meet the requirements of a State Review Board under regulations issued by the Secretary of the Interior pursuant to the Act of October 15, 1966 (16 U.S.C. § 470 et seq.).

(b) Subject to the requirements of subsection (a) of this section, all appointments to the Historic Preservation Review Board shall be made with a view toward having its membership represent to the greatest practicable extent the composition of the adult population of the District of Columbia with regard to race, sex, geographic distribution and other demographic characteristics. The term of office of each member of the Review Board shall be 3 years, staggered so that one third of the appointments expire each year. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed for the remainder of such term. Upon expiration of his or her term of office, a member shall continue to serve until his or her successor is appointed.

(c) The Review Board shall:

(1) Advise the Mayor on the compatibility with the purposes of this subchapter (as set forth in § 6-1101) of the applications referred to it by the Mayor pursuant to §§ 6-1104 through 6-1108;

(2) Perform the functions and duties of a State Review Board as set forth in regulations issued pursuant to the Act of October 15, 1966 (16 U.S.C. § 470 et seq.);

(3) Designate and maintain a current inventory of historic landmarks and historic districts in the District of Columbia and, in connection therewith, adopt and publish appropriate procedures; and

(4) Perform such other functions and duties relating to the protection, preservation, enhancement, and perpetuation of the historic, architectural, cultural and aesthetic heritage of the District of Columbia as the Mayor may from time to time assign.

(5) Repealed.

(d)(1) If, after a hearing, the Review Board has determined to deny an application to designate a building, structure, object or feature, and its site, as a historic landmark, or has determined to deny an application to designate a historic district, the Review Board shall not accept a subsequent application for that designation during the 12-month period after the denial.

(2) If an application for designation of a historic landmark or historic district is withdrawn, the Review Board shall not accept a new application for the same property during the 12-month period following the withdrawal.

(Mar. 3, 1979, D.C. Law 2-144, § 4, 25 DCR 6939; Apr. 29, 1998, D.C. Law 12-86, § 503(b), 45 DCR 1172; Oct. 19, 2000, D.C. Law 13-172, § 403(a), 47 DCR 6308; Nov. 16, 2006, D.C. Law 16-185, § 2(c), 53 DCR 6712.)

Cross references. — Duties of mayor prior to consideration of application, see § 9-202.02.

Historic Preservation Review Board, chairperson and members, compensation, see § 1-611.08.

Nomination and approval of agency heads, see § 1-523.01.

Section references. — This section is referred to in §§ 6-1102 and 6-1108.01.

Prior Codifications. — 1981 Ed., § 5-1003. 1973 Ed., § 5-823.

Effect of amendments. — D.C. Law 13-172 repealed par. (c)(5), which had read:

“Consider applications to designate historic landmarks under the contested case procedures contained in § 1-1509.”

D.C. Law 16-185, in subsec. (a), substituted “comprised of nine members who” for “whose members” and deleted the last sentence which had read: “Any body which functions as the District of Columbia State Review Board pursuant to the Act of October 15, 1966 (16 U.S.C. § 470 et seq.) as of the effective date of this subchapter, shall function as the Review Board pursuant to this section until a Review Board is established and its members nominated by the Mayor and confirmed by the Council of the District of Columbia pursuant to this section.”; in subsec. (b), inserted “The term of office of each member of the Review Board shall be 3 years, staggered so that one third of the appointments expire each year. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed for the remainder of such term. Upon expiration of his or her term of office, a member shall continue to serve until his or her successor is appointed.”; in subsec. (d)(1), substituted “during the 12-month period after the denial” for “within 12 months of the denial”; and, in subsec. (d)(2), substituted “the Review Board shall not accept a new application for the same property during the 12-month period following the withdrawal” for “no more than 1 new application may be filed 12 months from the date that the application is withdrawn”.

Emergency legislation. — For temporary (90-day) addition of section, see § 403(a) of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see § 403(a) of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 2-144. — For legislative history of D.C. Law 2-144, see Historical and Statutory Notes following § 6-1101.

Legislative history of Law 12-86. — Law 12-86, the “Omnibus Regulatory Reform Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-458, which was referred to the Committee on Public Works and the Environment and the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 19, 1997, and January 6, 1998, respectively. Signed by the Mayor on January 21, 1998, it was assigned Act No. 12-256 and transmitted to both Houses of Congress for its review. D.C. Law 12-86 became effective on April 29, 1998.

Legislative history of Law 13-172. — Law 13-172, the “Fiscal Year 2001 Budget Support Act of 2000,” was introduced in Council and assigned Bill No. 13-679, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 18, 2000, and June 6, 2000, respectively. Signed by the Mayor on June 26, 2000, it was assigned Act No. 13-375 and transmitted to both Houses of Congress for its review. D.C. Law 13-172 became effective on October 19, 2000.

Legislative history of Law 16-185. — For Law 16-185, see notes following § 6-1101.

Mayor’s Orders. — Historic Preservation Review Board established: See Mayor’s Orders 83-119, May 6, 1983, and 88-213, September 23, 1988, for the functions, composition, terms, and compensation for members of the Board.

Amendment of Mayor’s Order 83-119, dated May 6, 1983, Establishment of Historic Preservation Review Board: See Mayor’s Order 98-12, February 12, 1998 (45 DCR 1089).

Editor’s notes. — Because of the codification of D.C. Law 5-69 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 11 as subchapter I, “subchapter” has been substituted for “chapter,” where applicable, in this section.

Section 20(c) of D.C. Law 13-313, amends D.C. Law 13-172 by adding a new section 403a which provided:

Sec. 403a. Applicability. "Section 403(a) and (b)(1)(A) and (B) shall apply only prospectively to hearings held by the Mayor or the Historic

Preservation Board after the effective date of this title."

CASE NOTES

ANALYSIS

Administrative procedure generally.
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Judicial review or intervention.
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Administrative procedure generally.

Failure of interim committee composed of private citizens to comply with statutory requirement to act within 90 days on permit application requesting designation of building's exterior as historic landmark did not forever prohibit successor, government agency review board, from designating exterior of building as historic landmark in accordance with statute which requires agency to act upon permit application for historic landmark status within 90 days. D.C. Code 1981, §§ 5-1001 to 5-1015, 5-1003(a), 5-1004(e), 5-1005(f). *Weinberg v. Barry*, 634 F. Supp. 86, 1986 U.S. Dist. LEXIS 28132 (1986).

Mayor's agent was not required to disqualify herself on ground that failure to do so denied petitioner, which objected to permit for razing historical landmark in favor of development project, due process by appearance of unfairness arising from status of mayor's agent as employee of District of Columbia, combined with public support for project, where mayor's agent was not recipient of ex parte communications from advocate for one side of the issue, mayor's agent did not have personal interest or bias and there was no appearance of unfairness. D.C. Code 1980 Supp. § 5-821 et seq. *Citizens Committee to Save Historic Rhodes Tavern v. District of Columbia Dep't of Housing etc.*, 432 A.2d 710, 1981 D.C. App. LEXIS 304 (1981), writ of certiorari denied by 454 U.S. 1054, 102 S. Ct. 599, 70 L. Ed. 2d 590, 1981 U.S. LEXIS 4517, 50 U.S.L.W. 3402 (1981).

Designation of districts and landmarks.

In deciding whether to designate the area historic and, if so, where to draw boundaries, Historic Preservation Review Board is making policy decision directed toward general public, which is "legislative" process, rather than weighing particular information and arriving at decision directed at rights of specific individuals, which is "adjudicatory" process. *Metropolitan Baptist Church v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 718 A.2d 119, 1998 D.C. App. LEXIS 159 (1998).

There is no statutory or constitutional right to hearing before Historic Preservation Review Board when it is in process of designating

historic districts. *Metropolitan Baptist Church v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 718 A.2d 119, 1998 D.C. App. LEXIS 159 (1998).

Landowner was not statutorily entitled to hearing before his property was listed as historic landmark by District of Columbia Historic Preservation Review Board. D.C. Code 1981, §§ 1-1501 et seq., 5-1003(c)(3). *Donnelly Associates v. District of Columbia Historic Preservation Review Bd.*, 520 A.2d 270, 1987 D.C. App. LEXIS 270 (1987).

Landowner was not constitutionally entitled to full trial-type hearing prior to designation of its property as historic landmark by District of Columbia Historic Preservation Review Board. D.C. Code 1981, §§ 1-1501 et seq., 5-1003(c)(3); U.S. Const. Amend. 5. *Donnelly Associates v. District of Columbia Historic Preservation Review Bd.*, 520 A.2d 270, 1987 D.C. App. LEXIS 270 (1987).

Judicial review or intervention.

Beyond ensuring compliance with applicable statute and regulations, Court of Appeals is not in a position to micromanage Historic Preservation Review Board's conduct of its responsibilities. *Metropolitan Baptist Church v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 718 A.2d 119, 1998 D.C. App. LEXIS 159 (1998).

District of Columbia Historic Preservation Review Board proceeding to determine whether landowner's properties should be designated as historic landmarks was not "contested case," and thus, Court of Appeals had no jurisdiction to review Board's order designating properties as landmarks; no administrative hearing on matter was either statutorily or constitutionally compelled. D.C. Code 1981, §§ 1-1502(8), 1-1510(a). *Donnelly Associates v. District of Columbia Historic Preservation Review Bd.*, 520 A.2d 270, 1987 D.C. App. LEXIS 270 (1987).

In order to superimpose the substantial evidence requirement upon the Historic Preservation Review Board, the court must be able to determine that the Board's proceedings are tantamount to a trial-type hearing or adjudication—in other words, a contested case, in which there is a right to a trial-type hearing explicitly granted in the agency's organic act or where such a hearing is required by the United States Constitution. This section does not specifically require a trial-type hearing as to any affected person or other interested party, and there are

constitutionally adequate procedures already available to an affected property owner who is individually aggrieved at some later time after the Board has designated the landmark. *Dwyer v. District of Columbia*, 120 WLR 2609 (Super. Ct. 1992).

Where an Historic Preservation Review Board's written decision does not comply with the specific statutory mandate of § 1-261 requiring the Board to give "great weight" to the opinion or position of an Advisory Neighborhood Commission (ANC), violation of this requirement is to be remedied with a remand of the case to the agency, so that it can properly consider the ANC's position and supplement its final decision appropriately. *Dwyer v. District of Columbia*, 120 WLR 2609 (Super. Ct. 1992).

Mootness.

Historic Preservation Review Board's

(HPRB's) rejection of hotel developer's conceptual design proposal did not render moot developer's application for special exceptions and variances from the Board of Zoning Adjustment (BZA); HPRB's conceptual design reviews were not binding, and ultimate authority for approving application for construction in historic areas rested with Mayor's agent, not the HPRB, such that HPRB's approval of the plans was not required. *N. St. Follies, Ltd. P'shp v. D.C. Bd. of Zoning Adjustment*, 949 A.2d 584, 2008 D.C. App. LEXIS 260 (2008).

§ 6-1104. Demolitions.

(a) Before the Mayor may issue a permit to demolish an historic landmark or a building or structure in an historic district, the Mayor shall review the permit application in accordance with this section and place notice of the application in the District of Columbia Register.

(b) Prior to making the finding required by subsection (e) of this section, the Mayor may refer the application to the Historic Preservation Review Board for a recommendation, but shall so refer all applications that are not subject to review by the Commission of Fine Arts under the Old Georgetown Act (§ 6-1201 et seq.). The Mayor shall consider any recommendation by the Review Board or by the Commission of Fine Arts pursuant to such referral.

(c) Within 120 days after the Review Board receives the referral, the Mayor shall, after a public hearing, make the finding required by subsection (e) of this section; provided, that the Mayor may make such finding without a public hearing in the case of a building or structure in an historic district or on the site of an historic landmark if the Review Board or Commission of Fine Arts has advised in its recommendation that the building or structure does not contribute to the historic district or the historic landmark.

(d) If the Review Board recommends against granting the permit, it shall promptly notify the applicant in writing of its recommendation and the reasons therefor.

(e) No permit shall be issued unless the Mayor finds that issuance of the permit is necessary in the public interest, or that failure to issue a permit will result in unreasonable economic hardship to the owner.

(f) The owner shall submit at the hearing such information as is relevant and necessary to support his application.

(g)(1) In any instance where there is a claim of unreasonable economic hardship, the owner shall submit, by affidavit, to the Mayor at least 20 days prior to the public hearing, at least the following information:

(A) For all property:

(i) The amount paid for the property, the date of purchase, and the

party from whom purchased, including a description of the relationship, if any, between the owner and the person from whom the property was purchased;

(ii) The assessed value of the land and improvements thereon according to the 2 most recent assessments;

(iii) Real estate taxes for the previous 2 years;

(iv) Annual debt service, if any, for the previous 2 years;

(v) All appraisals obtained within the previous 2 years by the owner or applicant in connection with his purchase, financing or ownership of the property;

(vi) Any listing of the property for sale or rent, price asked, and offers received, if any; and

(vii) Any consideration by the owner as to profitable adaptive uses for the property; and

(B) For income-producing property:

(i) Annual gross income from the property for the previous 2 years;

(ii) Itemized operating and maintenance expenses for the previous 2 years;

(iii) Annual cash flow, if any, for the previous 2 years.

(2) The Mayor may require that an applicant furnish such additional information as the Mayor believes is relevant to his determination of unreasonable economic hardship and may provide in appropriate instances that such additional information be furnished under seal. In the event that any of the required information is not reasonably available to the applicant and cannot be obtained by the applicant, the applicant shall file with his affidavit a statement of the information which cannot be obtained and shall describe the reasons why such information cannot be obtained.

(h) In those cases in which the Mayor finds that the demolition is necessary to allow the construction of a project of special merit, no demolition permit shall be issued unless a permit for new construction is issued simultaneously under § 6-1107 and the owner demonstrates the ability to complete the project.

(Mar. 3, 1979, D.C. Law 2-144, § 5, 25 DCR 6939; Nov. 16, 2006, D.C. Law 16-185, § 2(d), 53 DCR 6712.)

Section references. — This section is referred to in §§ 6-1102, 6-1103, 6-1105, 6-1106, 6-1108, 6-1108.01, 6-1110, 6-1113, 42-3173.04, and 42-3173.05.

Prior Codifications. — 1981 Ed., § 5-1004. 1973 Ed., § 5-824.

Effect of amendments. — D.C. Law 16-185, in subsec. (c), substituted “if the Review

Board or Commission of Fine Arts has advised” for “if the Review Board has advised”.

Legislative history of Law 2-144. — For legislative history of D.C. Law 2-144, see Historical and Statutory Notes following § 6-1101.

Legislative history of Law 16-185. — For Law 16-185, see notes following § 6-1101.

CASE NOTES

ANALYSIS

Administrative procedure generally.

Determination generally.

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Findings.

Grounds for permit.

—Alternative economic use, grounds for permit.

—Economic hardship generally, grounds for permit.

—In general.

—Necessary in the public interest, grounds for permit.

—Special merit, grounds for permit.

Judicial review or intervention generally.

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Landmark or district designation.

Parties and standing.

Sufficiency of evidence.

Validity.

Administrative procedure generally.

Mayor's agent was not required to disqualify herself on ground that failure to do so denied petitioner, which objected to permit for razing historical landmark in favor of development project, due process by appearance of unfairness arising from status of mayor's agent as employee of District of Columbia, combined with public support for project, where mayor's agent was not recipient of ex parte communications from advocate for one side of the issue, mayor's agent did not have personal interest or bias and there was no appearance of unfairness. D.C. Code 1980 Supp. § 5-821 et seq. Citizens Committee to Save Historic Rhodes Tavern v. District of Columbia Dep't of Housing etc., 432 A.2d 710, 1981 D.C. App. LEXIS 304 (1981), writ of certiorari denied by 454 U.S. 1054, 102 S. Ct. 599, 70 L. Ed. 2d 590, 1981 U.S. LEXIS 4517, 50 U.S.L.W. 3402 (1981).

Even though Commission of Fine Arts had determined that subject structures did not contribute to historic district, referral to Joint Committee on Landmarks of the National Capital for review of public utility's application for demolition permit was proper, since District of Columbia Historic Landmark and Historic District Protection Act provided for discretionary duplicative review and, in so doing, posed no constitutional problem. D.C. Code §§ 5-801 et seq., 5-821 to 5-835. Don't Tear It Down, Inc. v. D. C. Dep't of Housing & Community Development, 428 A.2d 369, 1981 D.C. App. LEXIS 238 (1981).

Determination generally.

Historic Landmark and Historic District Protection Act (Preservation Act) does not require evaluation of applicant's ability to complete proposed project involving demolition of protected building until after determination of special merit has been made. D.C. Code 1981, § 5-1004(h). Committee of 100 on Federal City v. District of Columbia Dep't of Consumer & Regulatory Affairs, 571 A.2d 195, 1990 D.C. App. LEXIS 49 (1990).

To support finding of special merit justifying demolition of building in historic district, findings of fact must be based on substantial evidence on each material contested issue, and mayor's agent must reach rational conclusions based on those findings. D.C. Code 1981, §§ 1-1509(e), 1-1510(a)(3)(E). Committee of 100 on Federal City v. District of Columbia Dep't of Consumer & Regulatory Affairs, 571 A.2d 195, 1990 D.C. App. LEXIS 49 (1990).

Federal development programs.

Compliance with District of Columbia's Historic Landmark and Historic District Protection Act, which mandated approval of the Mayor for demolition of a building, was not required in implementing federal development program established by the Pennsylvania Avenue Development Corporation Act of 1972. Pennsylvania Avenue Development Corporation Act of 1972, § 2 et seq., 40 U.S.C. § 871 et seq. Don't Tear It Down, Inc. v. Pennsylvania Ave. Dev. Corp., 642 F.2d 527, 1980 U.S. App. LEXIS 14756 (C.A.D.C. 1980).

Findings.

In case involving demolition of historic building, determination by mayor's agent that project is of special merit implicitly includes finding that issuance of demolition permit is necessary for proposed project to proceed. D.C. Code 1981, §§ 1-1509(e), 1-1510(a)(3)(E). Committee of 100 on Federal City v. District of Columbia Dep't of Consumer & Regulatory Affairs, 571 A.2d 195, 1990 D.C. App. LEXIS 49 (1990).

Even if proposed housing and day-care components of new building that was to replace building in historic district could be found to meet standards required for project of "special merit" to justify demolition of existing building, mayor's agent failed to respond to material and relevant objections that housing and day-care amenities could be provided in renovated building and that proposals were lacking any details to demonstrate their feasibility, particularly as comprehensive plan could not be factored into support for proposed new building. Committee of 100 on Federal City v. District of Columbia Dep't of Consumer & Regulatory Affairs, 571 A.2d 195, 1990 D.C. App. LEXIS 49 (1990).

Mayor's agent for District of Columbia Historic Landmark and Historic District Protection Act, in authorizing issuance of demolition permit sought by public utility, was not required to explain why some testimony was credited and relied upon, while conflicting and contradictory testimony was rejected, and mayor's agent's findings were sufficient. D.C. Code §§ 5-821 to 5-835. Don't Tear It Down, Inc. v. D. C. Dep't of Housing & Community Development, 428 A.2d 369, 1981 D.C. App. LEXIS 238 (1981).

Mayor's agent for District of Columbia Historic Landmark and Historic District Protection Act is required to make written findings of basic fact on each materially contested issue; these findings, taken as a whole, must rationally lead to conclusions reached by agent; and each finding must be supported by evidence sufficient to convince reasonable minds of its adequacy. D.C. Code §§ 5-821 to 5-835. Don't Tear It Down, Inc. v. D. C. Dep't of Housing & Community Development, 428 A.2d 369, 1981 D.C. App. LEXIS 238 (1981).

Mayor's agent for District of Columbia Historic Landmark and Historic District Protection Act may not merely restate testimony of witnesses. D.C. Code §§ 5-821 to 5-835. Don't Tear It Down, Inc. v. D. C. Dep't of Housing & Community Development, 428 A.2d 369, 1981 D.C. App. LEXIS 238 (1981).

Finding that proposed substitution was special merit project within meaning of District of Columbia Historic Landmark and Historic District Protection Act would not be set aside on basis that mayor's agent did not directly relate that assertion to specific contested alternatives presented at hearing, where agent painstakingly summarized evidence adduced at hearing and discussed in some detail the evidence upon which she based her ultimate finding on material contested issue. D.C. Code §§ 5-821 to 5-835. Don't Tear It Down, Inc. v. D. C. Dep't of Housing & Community Development, 428 A.2d 369, 1981 D.C. App. LEXIS 238 (1981).

Grounds for permit.

— Alternative economic use, grounds for permit.

Mayor's agent could properly consider factors associated with alternatives to demolition of building in historic district such as cost, delay, and technical feasibility, in determining whether renovation should be required instead of demolition and rebuilding. Committee of 100 on Federal City v. District of Columbia Dep't of Consumer & Regulatory Affairs, 571 A.2d 195, 1990 D.C. App. LEXIS 49 (1990).

Under Historic Landmark and Historic District Protection Act, burden of proof is on property owner to establish that no other reasonable economic use for the building exists in order to show unreasonable economic hardship from denial of its application for a demolition permit. D.C. Code 1981, § 5-1004(e). MB Associates v. D.C. Dep't of Licenses, Investigation & Inspection, 456 A.2d 344, 1982 D.C. App. LEXIS 520 (1982).

Developer should be required to show that all reasonable alternatives were considered before permit for demolition of historic landmark is granted, but that does not mean that developer may select least expensive alternative and summarily reject those which are more costly.

D.C. Code 1980 Supp. § 5-821 et seq. Citizens Committee to Save Historic Rhodes Tavern v. District of Columbia Dep't of Housing etc., 432 A.2d 710, 1981 D.C. App. LEXIS 304 (1981), writ of certiorari denied by 454 U.S. 1054, 102 S. Ct. 599, 70 L. Ed. 2d 590, 1981 U.S. LEXIS 4517, 50 U.S.L.W. 3402 (1981).

If there is a reasonable alternative economic use for property after imposition of restriction on that property, there is no taking, and hence no unreasonable economic hardship to owners, no matter how diminished property may be in cash value and no matter if "higher" or "more beneficial" uses of property have been proscribed. 900 G. 900 G Street Associates v. Department of Housing & Community Dev., 430 A.2d 1387, 1981 D.C. App. LEXIS 308 (1981).

Where the historic preservation act to be applied in judging application for permit to demolish building designated an historic structure does not specify an exact rate of return required of alternative economic uses of building in order to support imposition of restrictions upon building, or even any assured rate of return, analogous principles of zoning and land use law may be applied. 900 G. 900 G Street Associates v. Department of Housing & Community Dev., 430 A.2d 1387, 1981 D.C. App. LEXIS 308 (1981).

Evidence that intended to substantiate claims that building designated as an historic landmark could be rented "as is" or with minimal renovation and that building could be fully renovated at cost of less than that claimed by building's owner and then rented supported conclusion that a reasonable alternative economic use for building existed other than demolition of building and redevelopment of property. 900 G. 900 G Street Associates v. Department of Housing & Community Dev., 430 A.2d 1387, 1981 D.C. App. LEXIS 308 (1981).

— Economic hardship generally, grounds for permit.

Developer seeking demolition permit for historic building in order to proceed with condominium project failed to demonstrate "unreasonable economic hardship" in denial of permit, as it failed to show that value of building had declined from time of purchase or that no other economically viable use existed; prior to purchasing building, developer knew that there was strong preservationist trend in area and its own counsel had advised that there was only 50 percent chance of obtaining required zoning variances for condominium project, and while argument that renovation of property as a single-family structure would be unprofitable was accepted, various chanceries had made unsolicited offers for building, and one of developer's partners had testified that he believed developer could recover its purchase price by

spending "a little bit of money." D.C. Code 1981, §§ 5-1002(14), 5-1004(e). *Kalorama Heights Ltd. Partnership v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 655 A.2d 865, 1995 D.C. App. LEXIS 59 (1995). *

Applicant for permit to demolish historic building on ground of "unreasonable economic hardship" resulting from denial of demolition permit has burden of proving that no reasonable alternative economic use for property exists and, thus, applicant must show that it would be deprived of all viable economic uses of property without demolition permit. D.C. Code 1981, §§ 5-1002(14), 5-1004(e). *Kalorama Heights Ltd. Partnership v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 655 A.2d 865, 1995 D.C. App. LEXIS 59 (1995).

Conclusion that renovation of building in historic district, instead of demolition and rebuilding, was not economically feasible was not supported by mayor's agent's findings of fact; agent found that if building were renovated, return would be approximately 7.32%, projected yield for typical downtown commercial income producing properties was 7 to 9%, and building owner admitted that modest return on building was being received. *Committee of 100 on Federal City v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 571 A.2d 195, 1990 D.C. App. LEXIS 49 (1990).

Requiring parties to spend substantial sums of money to preserve landmark structures with little or no public assistance could rise to level of unconstitutional taking. D.C. Code 1980 Supp. § 5-821 et seq.; U.S. Const. Amends. 5, 14. *Citizens Committee to Save Historic Rhodes Tavern v. District of Columbia Dep't of Housing etc.*, 432 A.2d 710, 1981 D.C. App. LEXIS 304 (1981), writ of certiorari denied by 454 U.S. 1054, 102 S. Ct. 599, 70 L. Ed. 2d 590, 1981 U.S. LEXIS 4517, 50 U.S.L.W. 3402 (1981).

Inclusion of building within protection of the Historic Landmark and the Historic District Protective Act of 1978 and denial of permit to demolish building did not constitute an unconstitutional "taking" from building's owners where there was a reasonable alternative economic use for building after imposition of restriction on building, despite fact that cash value of building was unquestionably diminished. D.C. Code 1980 Supp. § 5-821 et seq. 900 G. 900 G Street Associates v. Department of Housing & Community Dev., 430 A.2d 1387, 1981 D.C. App. LEXIS 308 (1981).

— In general.

Mayor's agent properly authorized issuance of permit under Preservation Act for demolition of south wall of historic firehouse, based on determination that partial removal of south wall would permit the retention, enhancement, and adaptation for current use of the building;

mayor's agent did not take into account improper cost and safety factors. D.C. Code 1981, §§ 5-1001(b)(2), 5-1004(e). *District of Columbia Preservation League v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 711 A.2d 1273, 1998 D.C. App. LEXIS 111 (1998).

Applicant has burden of proving entitlement to demolition permit under Historic Landmark and Historic District Protection Act; in meeting that burden, applicant must show that he considered alternatives to total demolition of historic building and that those alternatives were not reasonable. D.C. Code 1981, § 5-1004(e). *Kalorama Heights Ltd. Partnership v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 655 A.2d 865, 1995 D.C. App. LEXIS 59 (1995).

District's comprehensive plan could not be construed to support proposal for new building to replace building in historic district that would include two floors of permanent residential housing and day-care facility, where plan focused on indigent parents and did not direct that day-care programs be developed in downtown area, high cost of properties meant that residents in the neighborhood were unlikely to be indigent parents and that cost of day-care was unlikely to be within means of working parents who plan targeted for assistance in context of promoting economic self-support, and building was located in financial district. *Committee of 100 on Federal City v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 571 A.2d 195, 1990 D.C. App. LEXIS 49 (1990).

Mayor's agent did not fail to apply appropriate standard under Historic Landmark and Historic District Protection Act of 1978 before authorizing demolition permit where, although decision appeared to turn most exclusively on finding that proposed project was of special merit, agent considered historical significance of building proposed to be demolished, where, during three-day public hearing, mayor's agent took extensive testimony with respect to historic nature of building and where agent received substantial number of written comments many of which focused on building's historical significance. D.C. Code 1980 Supp. §§ 5-821(a), (b)(2), 5-822(j, k), 5-824(e). *Citizens Committee to Save Historic Rhodes Tavern v. District of Columbia Dep't of Housing etc.*, 432 A.2d 710, 1981 D.C. App. LEXIS 304 (1981), writ of certiorari denied by 454 U.S. 1054, 102 S. Ct. 599, 70 L. Ed. 2d 590, 1981 U.S. LEXIS 4517, 50 U.S.L.W. 3402 (1981).

Under the Historic Landmark and Historic District Protection Act of 1978, demolition is necessary in order to construct a project of special merit whenever retention of landmark on its original site becomes economically oppressive. D.C. Code 1980 Supp. § 5-821 et seq. *Citizens Committee to Save Historic Rhodes*

Tavern v. District of Columbia Dep't of Housing etc., 432 A.2d 710, 1981 D.C. App. LEXIS 304 (1981), writ of certiorari denied by 454 U.S. 1054, 102 S. Ct. 599, 70 L. Ed. 2d 590, 1981 U.S. LEXIS 4517, 50 U.S.L.W. 3402 (1981).

— **Necessary in the public interest, grounds for permit.**

Mayor's agent did not have authority to permit demolition of historical landmark under Preservation Act's "necessary in the public interest" standard, based on factors such as cost of refurbishing dilapidated structure and threat it posed to safety and welfare of community. D.C. Code 1981, § 5-1004(e). *District of Columbia Preservation League v. Department of Consumer & Regulatory Affairs*, 646 A.2d 984, 1994 D.C. App. LEXIS 138 (1994), amended by 1994 D.C. App. LEXIS 166 (D.C. Sept. 20, 1994).

Mayor's agent for District of Columbia Historic Landmark and Historic District Protection Act, in authorizing issuance of demolition permit sought by public utility, did not err in considering cost, delay, technical feasibility, and other factors in construing "necessary" standard. D.C. Code §§ 5-821 to 5-835. *Don't Tear It Down, Inc. v. D. C. Dep't of Housing & Community Development*, 428 A.2d 369, 1981 D.C. App. LEXIS 238 (1981).

— **Special merit, grounds for permit.**

The few design changes concerning windows and a setback for planned unit development (PUD) project involving razing of existing townhomes pursuant to demolition permits did not require a new determination of special merit based upon exemplary architecture under Historic Landmark and Historic District Protection Act (HLHDP). D.C. Code 1981, §§ 5-1004(e), 5-1007(f). *Hotel Tabard Inn v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 747 A.2d 1168, 2000 D.C. App. LEXIS 77 (2000).

Developer seeking demolition permit for property protected under Historic Landmark and Historic District Protection Act failed to establish that its project had social or other benefits that differed from those of any other condominium projects, or that developer had considered reasonable alternatives to complete demolition and, thus, Mayor's Agent's decision finding no "special merit" was not erroneous, and Mayor's Agent was not required to weigh historic value of property against proposed benefits of condominium project. D.C. Code 1981, §§ 5-1002(11), 5-1004(e). *Kalorama Heights Ltd. Partnership v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 655 A.2d 865, 1995 D.C. App. LEXIS 59 (1995).

Mayor's Agent is not required to carry out balancing analysis weighing historical significance of property protected under Historic

Landmark and Historic District Protection Act against benefits of proposed project unless Agent finds that project has "special merit." D.C. Code 1981, §§ 5-1002(11), 5-1004(e). *Kalorama Heights Ltd. Partnership v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 655 A.2d 865, 1995 D.C. App. LEXIS 59 (1995).

To justify demolishing historic building based on project's "special merit," applicant must show that it has considered alternatives to complete demolition. D.C. Code 1981, §§ 5-1002(11), 5-1004(e). *Kalorama Heights Ltd. Partnership v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 655 A.2d 865, 1995 D.C. App. LEXIS 59 (1995).

Factors that government stands to gain tax revenues from development of alleged historical property site and that development project would create new jobs are factors militating in favor of special merit of project and is a proper consideration in reviewing grant of a demolition permit to raze a historical landmark. D.C. Code 1980 Supp. § 5-822(k). *Citizens Committee to Save Historic Rhodes Tavern v. District of Columbia Dep't of Housing etc.*, 432 A.2d 710, 1981 D.C. App. LEXIS 304 (1981), writ of certiorari denied by 454 U.S. 1054, 102 S. Ct. 599, 70 L. Ed. 2d 590, 1981 U.S. LEXIS 4517, 50 U.S.L.W. 3402 (1981).

Historic Landmark and Historic District Protection Act of 1978 implicitly requires that mayor's agent weigh historical consideration underlying directive that application for demolition permit of historical landmark be denied unless there was finding that proposed project was one of special merit against special merit of the project. D.C. Code 1980 Supp. § 5-821 et seq. *Citizens Committee to Save Historic Rhodes Tavern v. District of Columbia Dep't of Housing etc.*, 432 A.2d 710, 1981 D.C. App. LEXIS 304 (1981), writ of certiorari denied by 454 U.S. 1054, 102 S. Ct. 599, 70 L. Ed. 2d 590, 1981 U.S. LEXIS 4517, 50 U.S.L.W. 3402 (1981).

In light of mayor's agent's findings that developers considered alternatives to preserve historical landmark and that they voluntarily delayed demolition proceedings until efforts to secure public funding to preserve landmark were exhausted, evidence in the record was sufficient to support mayor's agent's conclusion that issuance of demolition permit was necessary to construct project of special merit. D.C. Code 1980 Supp. §§ 5-821(b), 5-822(j, k), 5-824(e). *Citizens Committee to Save Historic Rhodes Tavern v. District of Columbia Dep't of Housing etc.*, 432 A.2d 710, 1981 D.C. App. LEXIS 304 (1981), writ of certiorari denied by 454 U.S. 1054, 102 S. Ct. 599, 70 L. Ed. 2d 590, 1981 U.S. LEXIS 4517, 50 U.S.L.W. 3402 (1981).

Judicial review or intervention generally.

There was no basis in federal law for district

court's order preserving the status quo with respect to historic tavern until completions of procedures contemplated in initiative which mandated the creation of an advisory board to negotiate with the owners of the tavern to determine whether the owners would enter into an agreement to preserve and restore the tavern on its present site. *Grano v. Barry*, 733 F.2d 164, 1984 U.S. App. LEXIS 22834 (C.A.D.C. 1984).

In appeals concerning the Historic Landmark and Historic Protection Act, the Court of Appeals defers to the expertise of the Mayor's Agent for Historic Preservation (Mayor's Agent) and the Historic Preservation Review Board (HPRB) as to what constitutes "special merit" sufficient to justify subdivision, demolition or alteration, and what is "incompatible," in the case of new construction, related to historic properties. *Embassy Real Estate Holdings, LLC v. D.C. Mayor's Agent For Historic Preservation*, 944 A.2d 1036, 2008 D.C. App. LEXIS 107 (2008).

Decision of the mayor's agent in hearing held pursuant to Historic Landmark and the Historic District Protection Act of 1978 to determine whether to issue a permit to demolish building designated as an historic landmark will be upheld on appeal unless it appears from record that there is obvious and egregious error. D.C. Code 1980 Supp. § 5-821 et seq. 900 G. 900 G Street Associates v. Department of Housing & Community Dev., 430 A.2d 1387, 1981 D.C. App. LEXIS 308 (1981).

Where no findings were made in regard to whether building contributed to historic district or whether denial of permit would result in unreasonable economic hardship to public utility, remand of order of mayor's agent for District of Columbia Historic Landmark and Historic District Protection Act authorizing issuance of demolition permit was necessary for mayor's agent to make finding as to whether question of building was before her, and if so, to make specific findings as to whether demolition permit should be granted for building. D.C. Code §§ 5-821 to 5-835. *Don't Tear It Down, Inc. v. D. C. Dep't of Housing & Community Development*, 428 A.2d 369, 1981 D.C. App. LEXIS 238 (1981).

The court had no authority to vacate a decision of the Historic Preservation Review Board where there was a technical violation of the Advisory Neighborhood Commission (ANC) statute, § 1-261 et seq., not by the Board but exclusively by the ANC itself. *Dwyer v. District of Columbia*, 120 WLR 2609 (Super. Ct. 1992).

Jurisdiction.

Issues raised by issuance of injunction which prevented the granting of a demolition permit for a tavern pending the outcome a referendum on an initiative to preserve the tavern were

rendered moot as a result of the passage of the initiative, in absence of evidence creating a reasonable expectation that the issues would reoccur. *Grano v. Barry*, 733 F.2d 164, 1984 U.S. App. LEXIS 22834 (C.A.D.C. 1984).

Church's claim that inclusion of church's rowhouses in historic district, which inclusion subjected rowhouses to permitting requirements for renovation, violated free exercise clause was not ripe for adjudication, where church had not submitted permit application or attempted to assemble application; specific requirements of any application, or time and expense necessary to prepare it, could not be determined as legal matter, it was not clear that church's "Vision 2000" program had advanced to such stage that church had developed immediate concrete plan for renovating rowhouses, effect of being subjected to permit requirements was undetermined, and requisite "certainty and effect" of alleged hardship did not exist. U.S. Const. Amend. 1; D.C. Code 1981, §§ 5-1004, 5-1005. *Metropolitan Baptist Church v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 718 A.2d 119, 1998 D.C. App. LEXIS 159 (1998).

District of Columbia Historic Preservation Review Board proceeding to determine whether landowner's properties should be designated as historic landmarks was not "contested case," and thus, Court of Appeals had no jurisdiction to review Board's order designating properties as landmarks; no administrative hearing on matter was either statutorily or constitutionally compelled. D.C. Code 1981, §§ 1-1502(8), 1-1510(a). *Donnelly Associates v. District of Columbia Historic Preservation Review Bd.*, 520 A.2d 270, 1987 D.C. App. LEXIS 270 (1987).

Landmark or district designation.

Failure of interim committee composed of private citizens to comply with statutory requirement to act within 90 days on permit application requesting designation of building's exterior as historic landmark did not forever prohibit successor, government agency review board, from designating exterior of building as historic landmark in accordance with statute which requires agency to act upon permit application for historic landmark status within 90 days. D.C. Code 1981, §§ 5-1001 to 5-1015, 5-1003(a), 5-1004(e), 5-1005(f). *Weinberg v. Barry*, 634 F. Supp. 86, 1986 U.S. Dist. LEXIS 28132 (1986).

Applicant was not entitled, under the Historic Landmark and Historic District Preservation Act, to a demolition permit to raze building that was designated a historic landmark; applicant abandoned any effort to meet the requirements of the Act when it withdrew its permit application and cancelled the hearing scheduled before the mayor's agent. *J.C. & Assocs. v.*

State Bd. of Appeals & Review, 778 A.2d 296, 2001 D.C. App. LEXIS 164 (2001).

Landowner was not statutorily entitled to hearing before his property was listed as historic landmark by District of Columbia Historic Preservation Review Board. D.C. Code 1981, §§ 1-1501 et seq., 5-1003(c)(3). *Donnelly Associates v. District of Columbia Historic Preservation Review Bd.*, 520 A.2d 270, 1987 D.C. App. LEXIS 270 (1987).

Landowner was not constitutionally entitled to full trial-type hearing prior to designation of its property as historic landmark by District of Columbia Historic Preservation Review Board. D.C. Code 1981, §§ 1-1501 et seq., 5-1003(c)(3); U.S. Const. Amend. 5. *Donnelly Associates v. District of Columbia Historic Preservation Review Bd.*, 520 A.2d 270, 1987 D.C. App. LEXIS 270 (1987).

Ninety-day period within which District of Columbia Historic Preservation Review Board must list property as historic landmark after "receipt" of property owner's demolition or alteration permit application begins to run when Department of Licenses receives permit application, not when Board itself receives it. D.C. Code 1981, § 5-1002(6)(B). *Donnelly Associates v. District of Columbia Historic Preservation Review Bd.*, 520 A.2d 270, 1987 D.C. App. LEXIS 270 (1987).

Parties and standing.

Nonprofit corporation interested in the preservation of District of Columbia landmarks was entitled to intervene, by permission, in action brought by trustees of property as to which the corporation had filed application for designation at historic landmark challenging landmark designation statute and complaining that pendency of application deprived owners of use and enjoyment of the property and diminished its value. *Fed.R.Civ.Proc. Rule 24(b)*, 18 U.S.C.; D.C. Code 1981, §§ 5-426, 5-1004(e), 5-1005(f). *Weinberg v. Barry*, 604 F. Supp. 390, 1985 U.S. Dist. LEXIS 21986 (1985).

Advisory neighborhood commission was precluded from seeking judicial review of order of mayor's agent for Historic Landmark and Historic District Protection Act authorizing issuance of demolition permit. D.C. Code §§ 5-821 to 5-835. *Don't Tear It Down, Inc. v. D. C. Dep't of Housing & Community Development*, 428 A.2d 369, 1981 D.C. App. LEXIS 238 (1981).

Chairman of advisory neighborhood commission was not entitled to be substituted in his individual capacity as party petitioner in action seeking review of order of mayor's agent for Historic Landmark and Historic District Protection Act authorizing issuance of demolition permit, since advisory neighborhood commission could not be a party and substitution was not necessary because two original parties in opposition were petitioners on appeal, and

chairman did not wish to file additional brief and did not assert that petitioners before Court of Appeals could not adequately represent interests of ANC. D.C. Code §§ 5-821 to 5-835; D.C. Code Court of Appeals Rules, Rule 43(a, b). *Don't Tear It Down, Inc. v. D. C. Dep't of Housing & Community Development*, 428 A.2d 369, 1981 D.C. App. LEXIS 238 (1981).

The Advisory Neighborhood Commission (ANC) is the real party in interest, with standing to complain about lack of adequate notice from the Historic Preservation Review Board; the Mayor would be the real party in interest to complain about the untimely receipt of an ANC resolution. *Dwyer v. District of Columbia*, 120 WLR 2609 (Super. Ct. 1992).

Sufficiency of evidence.

Decision by Mayor's Agent for Historic Preservation, that developer had not demonstrated compatibility with Historic Landmark and Historic Protection Act, or special merit or unreasonable economic hardship, sufficient to warrant issuance of permits for proposed development on property of former embassy that had received a landmark designation, was not arbitrary or capricious, and was supported by substantial evidence; developer proposed to demolish one-fourth of former embassy, proposed new tower conflicted with embassy's existing design, there was evidence that property had not lost any reasonable economic use as developer retained a permit to subdivide and had possible option of relocating tower, and there was evidence that developer's reasonable investment-backed expectations were not thwarted, as developer was aware before it invested in the proposed development that if landmark application was filed it would probably be granted. *Embassy Real Estate Holdings, LLC v. D.C. Mayor's Agent For Historic Preservation*, 944 A.2d 1036, 2008 D.C. App. LEXIS 107 (2008).

In proceeding on property owner's application for a demolition permit to demolish building under the Historic Landmark and Historic District Protection Act, evidence was sufficient to sustain findings by mayor's agent that the demolition permit was not necessary to avoid unreasonable economic hardship, and that owner's alternative proposal was not a project of special merit. D.C. Code 1981, §§ 5-1002(10), 5-1004(e). *MB Associates v. D.C. Dep't of Licenses, Investigation & Inspection*, 456 A.2d 344, 1982 D.C. App. LEXIS 520 (1982).

Validity.

Historic Landmark and Historic District Protection Act of 1978 was not impermissibly vague in that phrase "exemplary architecture," which was basis for finding of special merit of development project in order to approve permit for demolition of historic landmark, was dele-

gation of authority to mayor's agent without standard where mayor's agent was required to consider objective factors in weighing a claim of special merit based on exemplary architecture and, in present action, detailed architectural drawings and descriptions fully comporting with objective factors were submitted. D.C.

Code 1980 Supp. §§ 5-821 et seq., 5-822(k). Citizens Committee to Save Historic Rhodes Tavern v. District of Columbia Dep't of Housing etc., 432 A.2d 710, 1981 D.C. App. LEXIS 304 (1981), writ of certiorari denied by 454 U.S. 1054, 102 S. Ct. 599, 70 L. Ed. 2d 590, 1981 U.S. LEXIS 4517, 50 U.S.L.W. 3402 (1981).

§ 6-1104.01. Maintenance of property; prevention of demolition by neglect. [Repealed].

Repealed.

(Mar. 3, 1979, D.C. Law 2-144, § 5a, as added Apr. 27, 2001, D.C. Law 13-281, § 104(b), 48 DCR 1888; Nov. 16, 2006, D.C. Law 16-185, 2(e), 53 DCR 6712.)

Legislative history of Law 13-281. — For D.C. Law 13-281, see notes following § 6-801.

Legislative history of Law 16-185. — For Law 16-185, see notes following § 6-1101.

Delegation of Authority. — Delegation of

Authority Under D.C. Law 13-281, the "Abatement and Condemnation of Nuisance Property Omnibus Amendment Act of 2002", see Mayor's Order 2002-33, March 1, 2002 (49 DCR 1875).

§ 6-1104.02. Prevention of demolition by neglect. [Repealed].

Repealed.

(Mar. 3, 1979, D.C. Law 2-144, § 5b, as added Apr. 27, 2001, D.C. Law 13-281, § 104(b), 48 DCR 1888; Nov. 16, 2006, D.C. Law 16-185, § 2(f), 53 DCR 6712.)

Legislative history of Law 13-281. — For D.C. Law 13-281, see notes following § 6-801.

Legislative history of Law 16-185. — For Law 16-185, see notes following § 6-1101.

§ 6-1104.03. Revolving fund. [Repealed].

Repealed.

(Mar. 3, 1979, D.C. Law 2-144, § 5c, as added Apr. 27, 2001, D.C. Law 13-281, § 104(b), 48 DCR 1888; Nov. 16, 2006, D.C. Law 16-185, § 2(g), 53 DCR 6712.)

Legislative history of Law 13-281. — For D.C. Law 13-281, see notes following § 6-801.

Legislative history of Law 16-185. — For Law 16-185, see notes following § 6-1101.

§ 6-1105. Alterations.

(a) Before the Mayor may issue a permit to alter the exterior or site of an historic landmark or of a building or structure in an historic district, the Mayor shall review the permit application in accordance with this section and place notice of the application in the District of Columbia Register.

(b) Prior to making the finding required by subsection (f) of this section, the Mayor may refer the permit application to the Historic Preservation Review Board for a recommendation, but shall so refer all applications that are not subject to review by the Commission of Fine Arts under the Old Georgetown Act (§ 6-1201 et seq.) or the Shipstead-Luce Act (§ 6-611.01). The Mayor shall

consider any recommendation by the Review Board or by the Commission of Fine Arts pursuant to such referral.

(c) Within 120 days after the Review Board receives the referral pursuant to subsection (b) of this section, the Mayor shall make the finding required by subsection (f) of this section.

(d) If the Review Board recommends against granting the application, it shall promptly notify the applicant in writing of its recommendation and the reasons therefor. If the Commission of Fine Arts recommends against granting the application, the Historic Preservation Office shall notify the applicant of the Commission of Fine Arts' recommendation.

(e) In cases in which a claim of unreasonable economic hardship or special merit is made and in any other case he deems appropriate or in which the applicant so requests, the Mayor shall hold a public hearing on the permit application.

(f) No permit shall be issued unless the Mayor finds that such issuance is necessary in the public interest or that a failure to issue a permit will result in unreasonable economic hardship to the owner.

(g) The owner shall submit at the hearing such information as is relevant and necessary to support his application. In any instance where there is a claim of unreasonable economic hardship, the owner shall comply with the requirements of subsections (f) and (g) of § 6-1104.

(h) If the Mayor finds that an alteration is necessary to allow the construction of a project of special merit, a permit shall not be issued unless the owner demonstrates the ability to complete the project.

(Mar. 3, 1979, D.C. Law 2-144, § 6, 25 DCR 6939; May 10, 1989, D.C. Law 7-231, § 20, 36 DCR 492; Nov. 16, 2006, D.C. Law 16-185, § 2(h), 53 DCR 6712.)

Section references. — This section is referred to in §§ 6-1102, 6-1103, 6-1108, 6-1108.01, 6-1110, and 6-1113.

Prior Codifications. — 1981 Ed., § 5-1005. 1973 Ed., § 5-825.

Effect of amendments. — D.C. Law 16-185, in subsec. (d), inserted "If the Commission of Fine Arts recommends against granting the application, the Historic Preservation Office shall notify the applicant of the Commission of Fine Arts' recommendation."; and added subsec. (h).

Legislative history of Law 2-144. — For legislative history of D.C. Law 2-144, see Historical and Statutory Notes following § 6-1101.

Legislative history of Law 7-231. — Law 7-231, the "Technical Amendments Act of 1988," was introduced in Council and assigned Bill No. 7-586, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 29, 1988, and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-285 and transmitted to both Houses of Congress for its review.

Legislative history of Law 16-185. — For Law 16-185, see notes following § 6-1101.

CASE NOTES

ANALYSIS

Events constituting alteration.
Historic landmarks.
Judicial review or intervention.

Legislative intent.
Sufficiency of evidence.

Events constituting alteration.

Mayor's agent could consider not only pro-

posed changes to the rowhouse, but also the entire site, when considering under Historic District Protection Act whether the alterations proposed in application for curb cut and for related adjustments regarding construction of garage at rowhouse in historic district, including excavation of berm and paving of portion of front yard, were compatible and consistent with character of the historic district. *Gondelman v. D.C. Dep't of Consumer & Regulatory Affairs*, 789 A.2d 1238, 2002 D.C. App. LEXIS 11 (2002).

Mayor's agent and Historic Preservation Review Board (HPRB) could look to District of Columbia's comprehensive plan, mandating that "landscaped green space on publicly owned, privately maintained front and side yards in historic districts and on historic landmarks should be preserved," when determining under Historic District Protection Act whether approval should be given for application for curb cut and for related adjustments regarding construction of garage at rowhouse in historic district, including excavation of berm and paving of portion of front yard. *Gondelman v. D.C. Dep't of Consumer & Regulatory Affairs*, 789 A.2d 1238, 2002 D.C. App. LEXIS 11 (2002).

Condominium's application for permit to install trash dumpster and recycling bins permanently on public space and to surround dumpster/bins with wooden fence was request "to alter exterior or site of a building or structure in an historic district," and thus, Historic Landmark and Historic District Protection Act applied to permit request. D.C. Code 1981, § 5-1005(a). *Foster v. Mayor's Agent for Historic Preservation*, 698 A.2d 411, 1997 D.C. App. LEXIS 177 (1997).

Historic landmarks.

Description in the D.C. inventory of historic sites of street vista was so flawed that it was impossible to know what was described; therefore, the District of Columbia Historic Landmark and Historic District Protection Act did not apply to construction of international trade center on portion of that street and mayor was not required to refer all future construction permits for the international trade center to the Historic Preservation Review Board for its comments. D.C. Code 1981, §§ 5-1001 et seq., 5-1002(6), 5-1005(b). *Techworld Dev. Corp. v. D.C. Preservation League*, 648 F. Supp. 106, 1986 U.S. Dist. LEXIS 21851 (1986), vacated by, remanded by 1987 U.S. App. LEXIS 18346 (D.C. Cir. June 2, 1987).

Failure of interim committee composed of private citizens to comply with statutory requirement to act within 90 days on permit application requesting designation of building's exterior as historic landmark did not forever prohibit successor, government agency review board, from designating exterior of building as

historic landmark in accordance with statute which requires agency to act upon permit application for historic landmark status within 90 days. D.C. Code 1981, §§ 5-1001 to 5-1015, 5-1003(a), 5-1004(e), 5-1005(f). *Weinberg v. Barry*, 634 F. Supp. 86, 1986 U.S. Dist. LEXIS 28132 (1986).

Ninety-day period within which District of Columbia Historic Preservation Review Board must list property as historic landmark after "receipt" of property owner's demolition or alteration permit application begins to run when Department of Licenses receives permit application, not when Board itself receives it. D.C. Code 1981, § 5-1002(6)(B). *Donnelly Associates v. District of Columbia Historic Preservation Review Bd.*, 520 A.2d 270, 1987 D.C. App. LEXIS 270 (1987).

Judicial review or intervention.

Once the Mayor's Agent issued his final order denying their permits for construction of townhouses on landscaped area of apartment complex designated as historic landmark, landowners had exhausted their administrative remedies, and thus claim of unconstitutional taking was ripe for review, even though landowners did not request review pursuant to regulations regarding alterations, which would have allowed consideration of claims of economic hardship, where project had consistently been characterized as new construction, and District of Columbia did not argue that landowners were precluded from so characterizing it. D.C. Code 1981, §§ 5-1005, 5-1007. *District Intown Props. Ltd. Pshp. v. District of Columbia*, 23 F.Supp.2d 30, 1998 U.S. Dist. LEXIS 15427 (1998), affirmed by 198 F.3d 874, 339 U.S. App. D.C. 127, 1999 U.S. App. LEXIS 32701, 49 Env't Rep. Cas. (BNA) 1838 (1999).

Nonprofit corporation interested in the preservation of District of Columbia landmarks was entitled to intervene, by permission, in action brought by trustees of property as to which the corporation had filed application for designation at historic landmark challenging landmark designation statute and complaining that pendency of application deprived owners of use and enjoyment of the property and diminished its value. *Fed.R.Civ.Proc. Rule 24(b)*, 18 U.S.C.; D.C. Code 1981, §§ 5-426, 5-1004(e), 5-1005(f). *Weinberg v. Barry*, 604 F. Supp. 390, 1985 U.S. Dist. LEXIS 21986 (1985).

In appeals concerning the Historic Landmark and Historic Protection Act, the Court of Appeals defers to the expertise of the Mayor's Agent for Historic Preservation (Mayor's Agent) and the Historic Preservation Review Board (HPRB) as to what constitutes "special merit" sufficient to justify subdivision, demolition or alteration, and what is "incompatible," in the case of new construction, related to historic properties. *Embassy Real Estate Hold-*

ings, LLC v. D.C. Mayor's Agent For Historic Preservation, 944 A.2d 1036, 2008 D.C. App. LEXIS 107 (2008).

When mayor's agent's decision regarding application to make improvements in historic district is based on interpretation of statute and regulations the mayor's agent administers, that interpretation will be sustained unless shown to be unreasonable or in contravention of language of legislative history of the Historic District Protection Act. *Gondelman v. D.C. Dep't of Consumer & Regulatory Affairs*, 789 A.2d 1238, 2002 D.C. App. LEXIS 11 (2002).

In making the necessary findings regarding application to make improvements in historic district, mayor's agent is not required to explain why he or she favored one witness' testimony over another, or one statistic over another; however, some indication of the reason for rejecting expert, as opposed to lay, testimony is required. *Gondelman v. D.C. Dep't of Consumer & Regulatory Affairs*, 789 A.2d 1238, 2002 D.C. App. LEXIS 11 (2002).

Church's claim that inclusion of church's rowhouses in historic district, which inclusion subjected rowhouses to permitting requirements for renovation, violated free exercise clause was not ripe for adjudication, where church had not submitted permit application or attempted to assemble application; specific requirements of any application, or time and expense necessary to prepare it, could not be determined as legal matter, it was not clear that church's "Vision 2000" program had advanced to such stage that church had developed immediate concrete plan for renovating rowhouses, effect of being subjected to permit requirements was undetermined, and requisite "certainty and effect" of alleged hardship did not exist. U.S. Const. Amend. 1; D.C. Code 1981, §§ 5-1004, 5-1005. *Metropolitan Baptist Church v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 718 A.2d 119, 1998 D.C. App. LEXIS 159 (1998).

Legislative intent.

The basic legislative purpose of the Historic Protection Act was to provide a comprehensive

system of protection for historic sites, but the entire act would be rendered a nullity as to historic bridges if its protections could be evaded through the simple expedient of not applying for a building permit before altering those bridges. *Butler v. District of Columbia Dep't of Pub. Works*, 115 WLR 949 (Super. Ct.).

Sufficiency of evidence.

Decision by Mayor's Agent for Historic Preservation, that developer had not demonstrated compatibility with Historic Landmark and Historic Protection Act, or special merit or unreasonable economic hardship, sufficient to warrant issuance of permits for proposed development on property of former embassy that had received a landmark designation, was not arbitrary or capricious, and was supported by substantial evidence; developer proposed to demolish one-fourth of former embassy, proposed new tower conflicted with embassy's existing design, there was evidence that property had not lost any reasonable economic use as developer retained a permit to subdivide and had possible option of relocating tower, and there was evidence that developer's reasonable investment-backed expectations were not thwarted, as developer was aware before it invested in the proposed development that if landmark application was filed it would probably be granted. *Embassy Real Estate Holdings, LLC v. D.C. Mayor's Agent For Historic Preservation*, 944 A.2d 1036, 2008 D.C. App. LEXIS 107 (2008).

Evidence that the "stepped quality" of the block would be severely impacted by applicants' proposed alterations, and that the alterations could serve as precedent for other front parking pads that would reduce green space through berm removals, supported the denial under Historic District Protection Act of application for curb cut and for related adjustments regarding construction of garage at rowhouse in historic district, including excavation of berm and paving of portion of front yard. *Gondelman v. D.C. Dep't of Consumer & Regulatory Affairs*, 789 A.2d 1238, 2002 D.C. App. LEXIS 11 (2002).

§ 6-1106. Subdivisions.

(a) Before the Mayor may admit to record any subdivision of an historic landmark or of a property in an historic district, the Mayor shall review the application for admission to record in accordance with this section and place notice of the application in the District of Columbia Register.

(b) Prior to making the finding on the application for admission to record required by subsection (e) of this section, the Mayor shall refer the application to the Historic Preservation Review Board for its recommendation.

(c) Within 120 days after the Review Board receives the referral, the Mayor shall, after a public hearing, make the finding required by subsection (e) of this

section; provided, that the Mayor may make such finding without a public hearing in the case of a subdivision of a lot in an historic district or a subdivision that assembles land with the lot of a historic landmark if the Review Board advises him that such subdivision is consistent with the purposes of this subchapter.

(d) If the Review Board recommends against granting the application, it shall promptly notify the applicant in writing of its recommendation and the reasons therefor.

(e) No subdivision subject to this subchapter shall be admitted to record unless the Mayor finds that admission to record is necessary in the public interest or that a failure to do so will result in unreasonable economic hardship to the owner.

(f) The owner shall submit at the hearing such information as is relevant and necessary to support his application. In any case in which there is a claim of unreasonable economic hardship, the owner shall comply with the requirements of subsections (f) and (g) of § 6-1104.

(g) In those cases in which the Mayor finds that the subdivision is necessary to allow the construction of a project of special merit, no subdivision shall be permitted to record unless a permit for new construction is issued simultaneously under § 6-1107 and the owner demonstrates the ability to complete the project.

(Mar. 3, 1979, D.C. Law 2-144, § 7, 25 DCR 6939; Nov. 16, 2006, D.C. Law 16-185, § 2(i), 53 DCR 6712.)

Section references. — This section is referred to in §§ 6-1102, 6-1103, 6-1108, 6-1108.01, and 6-1113.

Prior Codifications. — 1981 Ed., § 5-1006. 1973 Ed., § 5-826.

Effect of amendments. — D.C. Law 16-185, in subsec. (c), substituted “historic district or a subdivision that assembles land with the lot of a historic landmark” for “historic district”; and, in subsec. (g), “no subdivision shall be permitted to record” for “no subdivision permit shall be issued”.

Legislative history of Law 2-144. — For legislative history of D.C. Law 2-144, see Historical and Statutory Notes following § 6-1101.

Legislative history of Law 16-185. — For Law 16-185, see notes following § 6-1101.

Editor’s notes. — Because of the codification of D.C. Law 5-69 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 11 as subchapter I, “subchapter” has been substituted for “chapter”, where applicable, in this section.

CASE NOTES

ANALYSIS

Establishment of subdivisions.
Judicial review or intervention.
Sufficiency of evidence.

Establishment of subdivisions.

Acting surveyor’s interpretation of word “subdivision” in Historic Landmark and Historic District Protection Act was not “rule” for purposes of District of Columbia Administrative Procedure Act. D.C. Code 1981, §§ 5-1001 et seq., 1-1501 et seq. *Acheson v. Sheaffer*, 520 A.2d 318, 1987 D.C. App. LEXIS 279 (1987).

Division of several property lots and their subsequent combination into two lots of record

did not constitute “subdivision” within meaning of Historic Landmark and Historic District Protection Act. D.C. Code 1981, § 5-1001 et seq. *Acheson v. Sheaffer*, 520 A.2d 318, 1987 D.C. App. LEXIS 279 (1987).

Judicial review or intervention.

In appeals concerning the Historic Landmark and Historic Protection Act, the Court of Appeals defers to the expertise of the Mayor’s Agent for Historic Preservation (Mayor’s Agent) and the Historic Preservation Review Board (HPRB) as to what constitutes “special merit” sufficient to justify subdivision, demolition or alteration, and what is “incompatible,” in the case of new construction, related to

historic properties. Embassy Real Estate Holdings, LLC v. D.C. Mayor's Agent For Historic Preservation, 944 A.2d 1036, 2008 D.C. App. LEXIS 107 (2008).

Sufficiency of evidence.

Decision by Mayor's Agent for Historic Preservation, that developer had not demonstrated compatibility with Historic Landmark and Historic Protection Act, or special merit or unreasonable economic hardship, sufficient to warrant issuance of permits for proposed development on property of former embassy that had received a landmark designation, was not arbitrary or capricious, and was supported by substantial evidence; developer proposed to

demolish one-fourth of former embassy, proposed new tower conflicted with embassy's existing design, there was evidence that property had not lost any reasonable economic use as developer retained a permit to subdivide and had possible option of relocating tower, and there was evidence that developer's reasonable investment-backed expectations were not thwarted, as developer was aware before it invested in the proposed development that if landmark application was filed it would probably be granted. Embassy Real Estate Holdings, LLC v. D.C. Mayor's Agent For Historic Preservation, 944 A.2d 1036, 2008 D.C. App. LEXIS 107 (2008).

§ 6-1107. New construction.

(a) Before the Mayor may issue a permit to construct a building or structure in an historic district or on the site of an historic landmark, the Mayor shall review the permit application in accordance with this section and shall place notice of the application in the District of Columbia Register.

(b) Prior to making the finding on the permit application required by subsection (f) of this section, the Mayor may refer the application to the Historic Preservation Review Board for a recommendation, but shall so refer all applications that are not subject to review by the Commission of Fine Arts under the Old Georgetown Act (§ 6-1201 et seq.) or the Shipstead-Luce Act (§ 6-611.01). The Mayor shall consider any recommendation by the Review Board or by the Commission of Fine Arts pursuant to such referral.

(c) Within 120 days after the Review Board receives the referral, the Mayor shall make the finding required by subsection (f) of this section.

(d) If the Review Board recommends against granting the application, it shall promptly notify the applicant in writing of its recommendation and the reasons therefor. If the Commission of Fine Arts recommends against granting the application, the Historic Preservation Office shall notify the applicant of the Commission of Fine Arts' recommendation.

(e) In any case where the Mayor deems appropriate, or in which the applicant so requests, the Mayor shall hold a public hearing on the permit application.

(f) The permit shall be issued unless the Mayor, after due consideration of the zoning laws and regulations of the District of Columbia, finds that the design of the building and the character of the historic district or historic landmark are incompatible; provided, that in any case in which an application is made for the construction of an additional building or structure on a lot upon which there is presently a building or structure, the Mayor may deny a construction permit entirely where he finds that any additional construction will be incompatible with the character of the historic district or historic landmark. Notwithstanding a finding of incompatibility, the Mayor may find that issuance of the permit is necessary to allow the construction of a project of special merit.

(Mar. 3, 1979, D.C. Law 2-144, § 8, 25 DCR 6939; Nov. 16, 2006, D.C. Law 16-185, § 2(j), 53 DCR 6712.)

Section references. — This section is referred to in §§ 6-1102, 6-1103, 6-1104, 6-1106, 6-1108, 6-1108.01, 6-1110, and 6-1113.

Prior Codifications. — 1981 Ed., § 5-1007. 1973 Ed., § 5-827.

Effect of amendments. — D.C. Law 16-185, in subsec. (d), inserted “If the Commission of Fine Arts recommends against granting the application, the Historic Preservation Office shall notify the applicant of the Commission of

Fine Arts’ recommendation.”; and, in subsec. (f), inserted “Notwithstanding a finding of incompatibility, the Mayor may find that issuance of the permit is necessary to allow the construction of a project of special merit.”

Legislative history of Law 2-144. — For legislative history of D.C. Law 2-144, see Historical and Statutory Notes following § 6-1101.

Legislative history of Law 16-185. — For Law 16-185, see notes following § 6-1101.

CASE NOTES

ANALYSIS

Administrative procedure generally.

Determination and findings.

Grounds.

Judicial review or intervention.

Mootness.

Takings.

Administrative procedure generally.

Citizens’ association did not have property interest which merited constitutional protection and required trial-type hearing prior to decision to grant either preliminary or final approval to application for construction permit allowing union to build on vacant land in historic area of District of Columbia based on either reduction of property values within historic district or permanent damage to historic character of designated neighborhood. D.C. Code 1981, §§ 5-1001 et seq., 5-1007. Dupont Circle Citizens Asso. v. Barry, 455 A.2d 417, 1983 D.C. App. LEXIS 288 (1983).

Where government action was approval of construction permit for building which had been subject to extensive design review so as to harmonize it with neighborhood architecture and historic area of District of Columbia, harm allegedly suffered by citizens’ association by granting of application was only speculative diminution in property values and alleged blight on character of historic district and did not command procedural safeguards beyond those already provided by Historic Landmark and Historic District Protection Act. D.C. Code 1981, §§ 5-1001 et seq., 5-1007. Dupont Circle Citizens Asso. v. Barry, 455 A.2d 417, 1983 D.C. App. LEXIS 288 (1983).

Determination and findings.

Mayor’s agent could consider not only proposed changes to the rowhouse, but also the entire site, when considering under Historic District Protection Act whether the alterations proposed in application for curb cut and for related adjustments regarding construction of

garage at rowhouse in historic district, including excavation of berm and paving of portion of front yard, were compatible and consistent with character of the historic district. Gondelman v. D.C. Dep’t of Consumer & Regulatory Affairs, 789 A.2d 1238, 2002 D.C. App. LEXIS 11 (2002).

Mayor’s agent and Historic Preservation Review Board (HPRB) could look to District of Columbia’s comprehensive plan, mandating that “landscaped green space on publicly owned, privately maintained front and side yards in historic districts and on historic landmarks should be preserved,” when determining under Historic District Protection Act whether approval should be given for application for curb cut and for related adjustments regarding construction of garage at rowhouse in historic district, including excavation of berm and paving of portion of front yard. Gondelman v. D.C. Dep’t of Consumer & Regulatory Affairs, 789 A.2d 1238, 2002 D.C. App. LEXIS 11 (2002).

Evidence that the “stepped quality” of the block would be severely impacted by applicants’ proposed alterations, and that the alterations could serve as precedent for other front parking pads that would reduce green space through berm removals, supported the denial under Historic District Protection Act of application for curb cut and for related adjustments regarding construction of garage at rowhouse in historic district, including excavation of berm and paving of portion of front yard. Gondelman v. D.C. Dep’t of Consumer & Regulatory Affairs, 789 A.2d 1238, 2002 D.C. App. LEXIS 11 (2002).

Opinion which was filed by the mayor’s agent in authorizing construction of a mixed use development on the Georgetown waterfront and which was to effect that, contrary to the objection raised by the Commission of Fine Arts based on project’s density and mass, project would create no obstruction to views of the river nor dominate or overshadow the historic district from the south was sufficient to show that the mayor’s agent not only summarized the

concerns and recommendations of the Commission in her findings, but also addressed them in sufficient detail and provided a reasoned explanation for her disagreement with those views. D.C. Code 1981, §§ 5-1007(b), 5-1102. Committee for Washington's Riverfront Parks v. Thompson, 451 A.2d 1177, 1982 D.C. App. LEXIS 451 (1982).

The mayor's agent did not fail to articulate the standard by which she assessed the compatibility of the developer's design for the contemplated mixed use development on the Georgetown waterfront and did not act arbitrarily and capriciously in concluding that the design was compatible with the historic district. D.C. Code 1981, §§ 5-1007(b), 5-1102. Committee for Washington's Riverfront Parks v. Thompson, 451 A.2d 1177, 1982 D.C. App. LEXIS 451 (1982).

Substantial evidence warranted finding of the mayor's agent that the design of the contemplated mixed development project on the Georgetown waterfront was compatible with not only twentieth century structures but also with older historic buildings in the area. D.C. Code 1981, §§ 5-1007(b), 5-1102. Committee for Washington's Riverfront Parks v. Thompson, 451 A.2d 1177, 1982 D.C. App. LEXIS 451 (1982).

The provisions of the Old Georgetown Act and the Historic Protection Act did not explicitly require that the mayor's agent accord special weight to the expert recommendation of the Commission in ruling on proposed waterfront development, but in light of the Commission's expertise and the statutory mandate that the mayor's agent consider its recommendation, the mayor's agent was required to demonstrate that the Commission's recommendation and concerns were considered in order to allow meaningful judicial review and to ensure that statutory requirements had been met. D.C. Code 1981, §§ 5-1007(b), 5-1102. Committee for Washington's Riverfront Parks v. Thompson, 451 A.2d 1177, 1982 D.C. App. LEXIS 451 (1982).

The mayor's agent was required in hearings on proposed waterfront development project to make findings of fact based on substantial evidence on each material contested issue and then to reach the conclusion based on those findings; mere restatements of the testimony of witnesses or recitations of evidence were insufficient substitutes for specific findings, but if the findings could be sifted from the restatement of evidence so that there were still findings on the material contested issues, the findings would not be set aside as amounting to mere restatements of testimony. D.C. Code 1981, §§ 5-1007(b), 5-1102. Committee for Washington's Riverfront Parks v. Thompson,

451 A.2d 1177, 1982 D.C. App. LEXIS 451 (1982).

Grounds.

The few design changes concerning windows and a setback for planned unit development (PUD) project involving razing of existing townhomes pursuant to demolition permits did not require a new determination of special merit based upon exemplary architecture under Historic Landmark and Historic District Protection Act (HLHDP). D.C. Code 1981, §§ 5-1004(e), 5-1007(f). Hotel Tabard Inn v. District of Columbia Dep't of Consumer & Regulatory Affairs, 747 A.2d 1168, 2000 D.C. App. LEXIS 77 (2000).

Compatibility with historic district or landmark is sole statutory criterion for determining whether new construction in district or on site of landmark shall be authorized. D.C. Code 1981, § 5-1007(f). District Intown Props. v. District of Columbia Dep't of Consumer & Regulatory Affairs, 680 A.2d 1373, 1996 D.C. App. LEXIS 139 (1996).

Judicial review or intervention.

Once the Mayor's Agent issued his final order denying their permits for construction of townhouses on landscaped area of apartment complex designated as historic landmark, landowners had exhausted their administrative remedies, and thus claim of unconstitutional taking was ripe for review, even though landowners did not request review pursuant to regulations regarding alterations, which would have allowed consideration of claims of economic hardship, where project had consistently been characterized as new construction, and District of Columbia did not argue that landowners were precluded from so characterizing it. D.C. Code 1981, §§ 5-1005, 5-1007. District Intown Props. Ltd. Pshp. v. District of Columbia, 23 F.Supp.2d 30, 1998 U.S. Dist. LEXIS 15427 (1998), affirmed by 198 F.3d 874, 339 U.S. App. D.C. 127, 1999 U.S. App. LEXIS 32701, 49 Env't Rep. Cas. (BNA) 1838 (1999).

In appeals concerning the Historic Landmark and Historic Protection Act, the Court of Appeals defers to the expertise of the Mayor's Agent for Historic Preservation (Mayor's Agent) and the Historic Preservation Review Board (HPRB) as to what constitutes "special merit" sufficient to justify subdivision, demolition or alteration, and what is "incompatible," in the case of new construction, related to historic properties. Embassy Real Estate Holdings, LLC v. D.C. Mayor's Agent For Historic Preservation, 944 A.2d 1036, 2008 D.C. App. LEXIS 107 (2008).

Developer did not allege injury in fact, justifying judicial review, resulting from findings of fact and conclusion of law by Mayor's Agent

that denial of developer's applications for permits for new construction on site of historic landmark would not constitute unreasonable economic hardship, as Mayor's Agent was not authorized to consider economic hardship in determining whether to grant new construction permit and Mayor's Agent's disposition of issue of economic hardship was in excess of statutory jurisdiction, and thus, developer had not been adversely affected or aggrieved by challenged findings and conclusions. D.C. Code 1981, § 5-1007(f). *District Intown Props. v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 680 A.2d 1373, 1996 D.C. App. LEXIS 139 (1996).

Citizens' association had standing to appeal decision not to grant hearing to association prior to either preliminary or final approval of application for construction permit allowing union to build on vacant land in historic area of District of Columbia where asserted injury was clash of proposed design with character of historic district and association's asserted interest in preserving integrity of historic old neighborhood was within zone of interests arguably protected by Historic Landmark and Historic District Protection Act. D.C. Code 1981, §§ 1-1510, 5-1001 et seq., 5-1007. *Dupont Circle Citizens Assn. v. Barry*, 455 A.2d 417, 1983 D.C. App. LEXIS 288 (1983).

Mootness.

Historic Preservation Review Board's (HPRB's) rejection of hotel developer's conceptual design proposal did not render moot developer's application for special exceptions and variances from the Board of Zoning Adjustment (BZA); HPRB's conceptual design reviews were not binding, and ultimate authority for approving application for construction in historic areas rested with Mayor's agent, not the HPRB, such that HPRB's approval of the plans was not required. *N. St. Follies, Ltd. P'shp v. D.C. Bd. of Zoning Adjustment*, 949 A.2d 584, 2008 D.C. App. LEXIS 260 (2008).

Takings.

For purpose of property owner's claim that District of Columbia engaged in taking without just compensation, by denying building permits for properties that were subdivided from lawn of owner's apartment building property, relevant parcel consisted of property as a whole, including apartment building lot and all of subdivided lots, not individual subdivided lots, as lots were spatially and functionally contiguous. U.S. Const. Amend. 5. *District Intown Props. Ltd. P'shp. v. District of Columbia*, 198 F.3d 874, 1999 U.S. App. LEXIS 32701 (C.A.D.C. 1999), writ of certiorari denied by 531

U.S. 812, 121 S. Ct. 34, 148 L. Ed. 2d 14, 2000 U.S. LEXIS 4890, 69 U.S.L.W. 3224 (2000).

Denial of owner's request for permits to build on parcels that were subdivided from lawn of apartment building property did not render property valueless, as required to establish total taking, even if subdivided parcels were considered separately from apartment building parcel, absent evidence that lawns' economic value was totally destroyed or evidence of parcels' fair market value after permits were denied. U.S. Const. Amend. 5. *District Intown Props. Ltd. P'shp. v. District of Columbia*, 198 F.3d 874, 1999 U.S. App. LEXIS 32701 (C.A.D.C. 1999), writ of certiorari denied by 531 U.S. 812, 121 S. Ct. 34, 148 L. Ed. 2d 14, 2000 U.S. LEXIS 4890, 69 U.S.L.W. 3224 (2000).

Denial of owner's request for permits to build on parcels that were subdivided from lawn of apartment building property did not amount to regulatory taking that would require just compensation, where there was no evidence that parcel as a whole was thereby unprofitable to maintain, and owner could not have had any reasonable investment-backed expectations of development given background regulatory structure at time of subdivision. U.S. Const. Amend. 5. *District Intown Props. Ltd. P'shp. v. District of Columbia*, 198 F.3d 874, 1999 U.S. App. LEXIS 32701 (C.A.D.C. 1999), writ of certiorari denied by 531 U.S. 812, 121 S. Ct. 34, 148 L. Ed. 2d 14, 2000 U.S. LEXIS 4890, 69 U.S.L.W. 3224 (2000).

Denial of permits for construction of townhouses on lots which had been subdivided from lawn of apartment building property which was designated as an historic landmark did not constitute a partial, compensable, taking; denial of permits was aimed at promoting congressionally recognized public interest, denial did not interfere unnecessarily with investment-backed expectations as property had been maintained by same owners as one unified lot for roughly 25 years and there was no claim that original purchase was in any way motivated by expectations concerning development of the lawn, owners were on notice that their property was subject to designation as an historic landmark, owners did not argue that the present arrangement did not yield a reasonable return, and there was synergistic value created by the building and the lawn. U.S. Const. Amend. 5; D.C. Code 1981, §§ 5-410, 5-1002, 5-1007, 5-4101. *District Intown Props. Ltd. P'shp. v. District of Columbia*, 23 F.Supp.2d 30, 1998 U.S. Dist. LEXIS 15427 (1998), affirmed by 198 F.3d 874, 339 U.S. App. D.C. 127, 1999 U.S. App. LEXIS 32701, 49 Env't Rep. Cas. (BNA) 1838 (1999).

§ 6-1108. Application for preliminary review.

(a) An applicant may apply to the Mayor for a preliminary review of a project for compliance with the provisions of this subchapter relating to new construction, and to any demolition, alteration, or subdivision necessary for such new construction. Upon the provision of such information and upon compliance with such other conditions as the Mayor may require, such application shall be considered by the Mayor without the necessity of the applicant completing other permit requirements not necessary for a finding under this subchapter. Where an application for a preliminary review is received pursuant to this section, the Mayor will determine, in accordance with the procedures and requirements specified in §§ 6-1104, 6-1105, 6-1106, and/or 6-1107, as applicable, whether to issue a preliminary finding of compliance with this subchapter; provided, that no permit shall be granted except in accordance with all other permit requirements, and after final review by the Mayor under this subchapter; provided further, that where the final review shows that the project is not consistent with the preliminary review, the application will again be processed in accordance with the procedures and requirements of §§ 6-1104, 6-1105, 6-1106, and/or 6-1107, as applicable.

(b) A prospective permit applicant may apply to the Historic Preservation Review Board for conceptual review of a project for compliance with the provisions of this subchapter relating to demolition, alteration, subdivision, or new construction. After receipt of such information as it may require, the Review Board shall consider the application without requiring the applicant to complete other permit requirements not necessary for its review. To assist in conducting conceptual review, the Review Board may appoint advisory committees composed of two or more Review Board members.

(c) The Mayor shall not determine compliance with § 6-1104, § 6-1105, § 6-1106, or § 6-1107 based on an application for conceptual review, but the Mayor may consider the Review Board's recommendation on an application for conceptual review as evidence to support a finding on a related application submitted for review under § 6-1104, § 6-1105, § 6-1106, or § 6-1107.

(Mar. 3, 1979, D.C. Law 2-144, § 9, 25 DCR 6939; Nov. 16, 2006, D.C. Law 16-185, § 2(k), 53 DCR 6712.)

Section references. — This section is referred to in §§ 6-1102 and 6-1103.

Prior Codifications. — 1981 Ed., § 5-1008. 1973 Ed., § 5-828.

Effect of amendments. — D.C. Law 16-185 designated the existing text as subsec. (a); and added subsecs. (b) and (c).

Legislative history of Law 2-144. — For legislative history of D.C. Law 2-144, see Historical and Statutory Notes following § 6-1101.

Legislative history of Law 16-185. — For Law 16-185, see notes following § 6-1101.

Editor's notes. — Because of the codification of D.C. Law 5-69 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 11 as subchapter I, "subchapter" has been substituted for "chapter," where applicable, in this section.

CASE NOTES

Mootness.

Historic Preservation Review Board's

(HPRB's) rejection of hotel developer's conceptual design proposal did not render moot devel-

oper's application for special exceptions and variances from the Board of Zoning Adjustment (BZA); HPRB's conceptual design reviews were not binding, and ultimate authority for approving application for construction in historic ar-

eas rested with Mayor's agent, not the HPRB, such that HPRB's approval of the plans was not required. *N. St. Follies, Ltd. P'shp v. D.C. Bd. of Zoning Adjustment*, 949 A.2d 584, 2008 D.C. App. LEXIS 260 (2008).

§ 6-1108.01. Conceptual review of public safety facilities.

(a) For any public safety facility that is a historic landmark, potential historic landmark as determined by the State Historic Preservation Officer, or building or structure within a historic district, the Mayor shall conduct conceptual review of a proposed rehabilitation or new construction in accordance with this section and shall publish notice of the application for conceptual review in the District of Columbia Register.

(b) Before proceeding beyond conceptual plans for a proposed rehabilitation or new construction, and before making the referral required in § 6-1104(b), § 6-1105(b), § 6-1106(b), or § 6-1107(b), the Mayor shall refer an application for conceptual review of a proposed rehabilitation or new construction plan to the State Historic Preservation Officer and the Historic Preservation Review Board, and may refer the application to the Commission of Fine Arts for a recommendation.

(c) The State Historic Preservation Officer shall advise the Mayor on how to accommodate the rehabilitation or new construction plan with any historic preservation interests consistent with operational needs of the public safety facility.

(d)(1) The Historic Preservation Review Board shall:

(A) Advise the Mayor on the compatibility of the rehabilitation or new construction plan with the purposes set forth in § 6-1101(b); and

(B) Determine whether to list the property as a historic landmark pursuant to § 6-1103(c).

(2) If the Historic Preservation Review Board recommends against granting the application, it shall promptly notify the Mayor in writing of its recommendation and the reasons for it.

(e) Within 120 days after the Mayor refers the application for conceptual review to the Historic Preservation Review Board pursuant to subsection (b) of this section, the Mayor shall make the finding required by subsection (f) of this section. If the Mayor makes no finding within 120 days, the project shall be deemed to be one of special merit as that term is defined in § 6-1102(11), and the affected public safety agency may proceed with the design and permit process, unless the affected public safety agency and the State Historic Preservation Officer agree in writing to an extension of time for the Mayor to make the finding required by subsection (f) of this section.

(f) No permit shall be issued unless the Mayor finds that the issuance of a permit is necessary in the public interest. Upon making such a finding, the Mayor shall issue an order defining the nature of the approved conceptual design and specifying any further consultation the Mayor considers appropriate prior to the submission of the application required in § 6-1104(b), § 6-1105(b), § 6-1106(b), or § 6-1107(b).

(g) In a case in which a claim of special merit is made, the Mayor shall hold

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a public hearing on the conceptual review application. In considering a claim of special merit, substantial rehabilitation or new construction for operational needs of a public safety facility shall constitute a public interest having a significantly higher priority than that of historic preservation. The Mayor may consider increased costs of historic preservation that constitute an excessive financial burden on the operational needs of the facility in deciding whether to issue a permit.

(Mar. 3, 1979, D.C. Law 2-144, § 9a, as added Mar. 16, 2005, D.C. Law 15-228, § 2(b), 51 DCR 10562.)

Emergency legislation. — For temporary (90 day) addition, see § 2(b) of Historic Preservation Process for Public Safety Facilities Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-502, August 2, 2004, 51 DCR 8817).

For temporary (90 day) addition, see § 2(b) of Historic Preservation Process for Public Safety Facilities Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-595, November 30, 2004, 51 DCR 11215).

For temporary (90 day) addition, see § 2(b) of

Historic Preservation Process for Public Safety Facilities Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-24, February 17, 2005, 52 DCR 2978).

Legislative history of Law 15-228. — For Law 15-228, see notes following § 6-1102.

Delegation of Authority. — Delegation of Authority pursuant to the Targeted Historic Preservation Assistance Amendment Act of 2006, see Mayor's Order 2008-80, June 5, 2008 (55 DCR 6940).

§ 6-1108.02. Effect of District undertaking; comment by State Historic Preservation Officer.

Before authorizing the expenditure of funds for design or construction or seeking the permit, license, or approval for a District of Columbia undertaking, the Deputy Mayor, head of the subordinate agency, or head of the independent agency with direct jurisdiction over the undertaking shall take into account the effect of that undertaking on any property listed or eligible for listing in the District of Columbia Inventory of Historic Sites and shall consult with and afford the State Historic Preservation Officer a reasonable opportunity to comment on the undertaking.

(Mar. 3, 1979, D.C. Law 2-144, § 9b, as added Nov. 16, 2006, D.C. Law 16-185, § 2(l), 53 DCR 6712.)

Legislative history of Law 16-185. — For Law 16-185, see notes following § 6-1101.

§ 6-1109. Regulations.

The Mayor is authorized to issue such regulations as may be necessary or appropriate to carry out his duties under this subchapter.

(Mar. 3, 1979, D.C. Law 2-144, § 10, 25 DCR 6939; Nov. 16, 2006, D.C. Law 16-185, § 2(m), 53 DCR 6712.)

Prior Codifications. — 1981 Ed., § 5-1009. 1973 Ed., § 5-829.

Effect of amendments. — D.C. Law 16-185 deleted the second sentence which had read as follows: "Such regulations shall be issued to

take effect within 60 days from the effective date of this subchapter."

Legislative history of Law 2-144. — For legislative history of D.C. Law 2-144, see Historical and Statutory Notes following § 6-1101.

Legislative history of Law 16-185. — For Law 16-185, see notes following § 6-1101.

Editor's notes. — Because of the codification of D.C. Law 5-69 as subchapter II of this

chapter, and the designation of the preexisting text of Chapter 11 as subchapter I, "subchapter" has been substituted for "chapter," where applicable, in this section.

§ 6-1109.01. Violations.

(a) It shall be unlawful for any person to alter, demolish, or construct any building or structure subject to the provisions of this subchapter or to subdivide any property subject to the provisions of this subchapter except in accordance with this subchapter or any rules, regulations, permits, or orders issued pursuant to this subchapter.

(b) It shall be unlawful for any person acting under authority of or pursuant to a building permit or otherwise subject to this subchapter to fail to complete any alteration, repair, construction, or other work required as a condition of any order, permit approval, or enforcement action issued in accordance with this subchapter.

(Mar. 3, 1979, D.C. Law 2-144, § 10a, as added Nov. 16, 2006, D.C. Law 16-185, § 2(n), 53 DCR 6712.)

Legislative history of Law 16-185. — For Law 16-185, see notes following § 6-1101.

§ 6-1109.02. Maintenance of property.

(a) The owner of an historic landmark or a contributing building or structure within an historic district shall comply with all laws and regulations governing the maintenance of real property. The buildings or structures shall be preserved against decay and deterioration and shall be made and kept free from structural defects through prompt correction of defects, such as:

(1) Facade or facade elements that may fall and injure persons or property;

(2) Deteriorated or inadequate foundation, defective or deteriorated flooring or floor supports, deteriorated walls, or other vertical structural supports;

(3) Members of ceilings, roofs, ceiling and roof supports, or other horizontal members that sag, split, or buckle due to defective material or deterioration;

(4) Deteriorated or ineffective waterproofing of exterior walls, roofs, foundations, or floors, including broken windows or doors;

(5) Defective or insufficient weather protection for exterior wall covering, including lack of paint or weathering due to lack of paint or other protective covering; or

(6) A fault or defect in the building or structure that renders it structurally unsafe or not properly watertight.

(b) An owner who fails to maintain a building or structure in compliance with this section shall be subject to the remedial requirements of § 6-1109.03 and the penalties under § 6-1110.

(Mar. 3, 1979, D.C. Law 2-144, § 10b, as added Nov. 16, 2006, D.C. Law 16-185, § 2(n), 53 DCR 6712.)

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Legislative history of Law 16-185. — For Law 16-185, see notes following § 6-1101.

§ 6-1109.03. Prevention of demolition by neglect.

(a) If the Mayor determines that an historic landmark or a contributing building or structure within a historic district is threatened by demolition by neglect, upon obtaining an order from the Superior Court of the District of Columbia, the Mayor may:

(1) Require the owner to repair all conditions contributing to demolition by neglect; or

(2) If the owner does not make the required repairs within a reasonable period of time, enter the property and make the repairs necessary to prevent demolition by neglect.

(b) The cost of any work undertaken pursuant to subsection (a) of this section shall be charged to the owner and may be levied by the District of Columbia as a special assessment against the real property. The special assessment shall be a lien against the real property.

(Mar. 3, 1979, D.C. Law 2-144, § 10c, as added Nov. 16, 2006, D.C. Law 16-185, § 2(n), 53 DCR 6712.)

Legislative history of Law 16-185. — For Law 16-185, see notes following § 6-1101.

§ 6-1109.04. Annual notice to property owners.

Beginning with real property assessments for tax year 2013 and for each real property tax year thereafter, the Mayor shall provide, along with the annual notice of the assessment for the next real property tax year, each owner of real property with a historic landmark designation and each owner of real property located within a historic district information on the current law and regulations relating to historic property improvements, including regarding:

- (1) Building permits;
- (2) Consultation with Advisory Neighborhood Commissions;
- (3) Review by the Commission of Fine Arts; and
- (4) Any other information that the Mayor determines would be helpful to owners of historic properties.

(Mar. 3, 1979, D.C. Law 2-144, § 10d, as added Apr. 27, 2012, D.C. Law 19-123, § 2, 59 DCR 1707.)

Legislative history of Law 19-123. — Law 19-123, the “Historic Property Improvement Notification Amendment Act of 2012”, was introduced in Council and assigned Bill No. 19-429, which was referred to the Committee on Libraries, Parks, Recreation & Planning. The Bill was adopted on first and second readings

on January 4, 2012, and February 7, 2012, respectively. Signed by the Mayor on February 21, 2012, it was assigned Act No. 19-315 and transmitted to both Houses of Congress for its review. D.C. Law 19-123 became effective on April 27, 2012.

§ 6-1110. Penalties; remedies; enforcement.

(a) *Criminal penalty.* — Any person who willfully violates any provision of this subchapter or of any regulation issued under the authority of this subchapter shall, upon conviction, be fined not more than \$1,000 for each day a violation occurs or continues or be imprisoned for not more than 90 days, or both. Any prosecution for violations of this subchapter or of any regulations issued under the authority of this subchapter shall be brought in the name of the District of Columbia in the Superior Court of the District of Columbia by the Office of Attorney General for the District of Columbia.

(b) *Civil remedy.* — Any person who demolishes, alters or constructs a building or structure in violation of § 6-1104, § 6-1105, or § 6-1107 shall be required to restore the building or structure and its site to its appearance prior to the violation. Any action to enforce this subsection shall be brought in the name of the District of Columbia in the Superior Court of the District of Columbia by the Office of Attorney General for the District of Columbia. This civil remedy shall be in addition to and not in lieu of any criminal prosecution and penalty.

(c) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this subchapter, or any rules or regulations issued under the authority of this subchapter, pursuant to Chapter 18 of Title 2. Adjudication of any infraction of this subchapter shall be pursuant to Chapter 18 of Title 2.

(d)(1) The Historic Preservation Office shall be responsible for enforcement of the provisions of this subchapter.

(2) The Mayor may delegate to the Historic Preservation Office coordinated enforcement of Building Code provisions applicable to preservation of historic landmarks and historic districts pursuant to a written agreement with and under the authority of the Building Code Official.

(e) An appeal of any enforcement action brought by the Historic Preservation Office shall be heard by the Office of Administrative Hearings.

(Mar. 3, 1979, D.C. Law 2-144, § 11, 25 DCR 6939; Oct. 5, 1985, D.C. Law 6-42, § 412, 32 DCR 4450; Nov. 16, 2006, D.C. Law 16-185, 2(o), 53 DCR 6712; Mar. 2, 2007, D.C. Law 16-189, § 2(b), 53 DCR 6786.; Mar. 25, 2009, D.C. Law 17-353, § 128(a), 56 DCR 1117.)

Prior Codifications. — 1981 Ed., § 5-1010. 1973 Ed., § 5-830.

Effect of amendments. — D.C. Law 16-185 added subsec. (d).

D.C. Law 16-189 added subsec. (e).

D.C. Law 17-353 validated a previously made technical correction in the designation of subsec. (e).

Emergency legislation. — For temporary (90 day) amendment of section, see §§ 2(b), 4 of Targeted Historic Preservation Assistance Emergency Amendment Act of 2006 (D.C. Act 16-472, July 31, 2006, 53 DCR 6781).

For temporary (90 day) amendment of section, see § 2(b) of Targeted Historic Preserva-

tion Assistance Congressional Review Emergency Act of 2006 (D.C. Act 16-500, October 23, 2006, 53 DCR 9046).

Legislative history of Law 2-144. — For legislative history of D.C. Law 2-144, see Historical and Statutory Notes following § 6-1101.

Legislative history of Law 6-42. — Law 6-42, the “Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985,” was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned

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Act No. 6-60 and transmitted to both houses of Congress for its review.

Legislative history of Law 16-185. — For Law 16-185, see notes following § 6-1101.

Legislative history of Law 16-189. — For Law 16-189, see notes following § 6-1102.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 6-201.

Editor's notes. — Because of the codification of D.C. Law 5-69 as subchapter II of this

chapter, and the designation of the preexisting text of Chapter 11 as subchapter I, "subchapter" has been substituted for "chapter," where applicable, in this section.

Applicability: Section 4 of D.C. Law 16-189 provided: "The implementation of the provisions of this act is subject to appropriations and nothing in this act shall be construed to create an entitlement."

CASE NOTES

In general.

After it was determined that mayor's agent exceeded his authority under Preservation Act in granting application to demolish historic landmark, mayor's agent was required on remand to either refer case to corporation counsel to initiate proceedings to require landowner to restore building to its former appearance, or to refer case to condemnation board for the con-

demnation of insanitary buildings so that it could begin condemnation proceedings under the Insanitary Buildings Act. D.C. Code 1981, §§ 5-705, 5-1010(b). *District of Columbia Preservation League v. Department of Consumer & Regulatory Affairs*, 646 A.2d 984, 1994 D.C. App. LEXIS 138 (1994), amended by 1994 D.C. App. LEXIS 166 (D.C. Sept. 20, 1994).

§ 6-1110.01. Historic Landmark-District Protection Fund; establishment.

(a) There is established within the General Fund of the District of Columbia, the Historic Landmark-District Protection Fund ("HLP Fund") as a nonlapsing, revolving fund; the funds of which shall not revert to the General Fund at the end of any fiscal but shall remain available, without regard to fiscal year limitation, pursuant to an act of Congress, for the purpose of paying the costs of repair work necessary to prevent demolition by neglect as described in § 6-1109.03 or for the costs of carrying out any other historic preservation program consistent with the purposes of and pursuant to this subchapter.

(b) There shall be deposited into the HLP Fund:

- (1) Such amounts as may be appropriated for the fund;
- (2) Grants or donations from any source to the fund or to the District of Columbia for the purposes of the fund;
- (3) Interest earned from the deposit or investment of monies of the fund;
- (4) Amounts assessed and collected as costs or penalties under this subchapter, or otherwise received to recoup any amounts, incidental expenses, or costs incurred or expended for purposes of the fund, or any sums received pursuant to a resolution or settlement of disputes or enforcement actions under this subchapter where the resolution or settlement provides in writing for such payment;
- (5) All other receipts derived from the operation of the fund;
- (6) The proceeds from the sale of real or personal property or other items of value from any source donated to the fund or to the District of Columbia for the purposes of the fund; and
- (7) All proceeds from the payment of the filing fee and transmittal fees for applications to designate a historic landmark or historic district as set forth at 10-C DCMR § 205.

(c) The Mayor shall include in the budget estimates of the District of Columbia for each fiscal year such amount as may be necessary for capitalization of the HLP Fund.

(Mar. 3, 1979, D.C. Law 2-144, §⁴ 11a, as added Nov. 16, 2006, D.C. Law 16-185, § 2(p), 53 DCR 6712; Sept. 14, 2011, D.C. Law 19-21, § 2012, 58 DCR 6226.)

Effect of amendments. — D.C. Law 19-21, in subsec. (b), deleted “and” from the end of par. (5), substituted “; and” for a period the end of par. (6), and added par. (7).

Legislative history of Law 16-185. — For Law 16-185, see notes following § 6-1101.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 6-226.

Short title. — Short title: Section 2011 of D.C. Law 19-21 provided that subtitle B of title II of the act may be cited as “Historic Preservation Fee Authorization Clarification Amendment Act of 2011”.

Editor’s notes. — Section 2015 of D.C. Law 19-21 provided that this subtitle shall apply as of October 1, 2000.

§ 6-1110.02. Targeted Homeowner Grant Program.

(a) The Mayor may use authorized funds to establish a targeted homeowner grant program to assist homeowners with the rehabilitation of their historic property.

(b) A grant under this program may be used to rehabilitate a structure that contributes to the character of one of the following historic districts:

- (1) Anacostia Historic District;
- (2) Blagden Alley/Naylor Court Historic District;
- (3) Capitol Hill Historic District;
- (4) Greater Fourteenth Street Historic District;
- (5) Greater U Street Historic District;
- (6) LeDroit Park Historic District;
- (7) Mount Pleasant Historic District;
- (8) Mount Vernon Square Historic District;
- (9) Mount Vernon Triangle Historic District;
- (10) Shaw Historic District;
- (11) Strivers’ Section Historic District; or
- (12) Takoma Park Historic District.

(c) A grant shall be limited to structural repairs or work on the exterior of a qualified structure;

(d) A grant shall not exceed \$25,000; except, that a grant may be a maximum of \$35,000 if the structure is located in the Anacostia Historic District.

(e)(1) A grant may be made to a taxpayer, as defined in § 47-1801.04(7), who has a household income of 120% or less of the area median income; provided, that:

(A) The grant is for rehabilitation of the taxpayer’s principal place of residence or a structure that will be the taxpayer’s principal place of residence within 60 days after the rehabilitation is completed;

(B) The taxpayer submits an application showing that the taxpayer meets the applicable household income criteria and is listed on the Office of Tax and Revenue’s records as currently receiving the homestead deduction for property taxes, and includes written consent from each person in the appli-

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cant's household to disclosure by Office of Tax and Revenue to the Historic Preservation Office of his or her gross income; which disclosure shall be used solely for consideration of grant applications under this section.

(2) The Office of Tax and Revenue shall report the gross income of each of the persons in the taxpayer's household at the time the grant application is made pursuant to subparagraph (B) of paragraph (1) based upon the most recent income tax return of each person to the Historic Preservation Office prior to the award of a grant.

(f) A taxpayer who has a household income of more than 60% but no more than 90% of area median income shall be required to match the grant by contributing a minimum of 25% of the cost of the rehabilitation; except, that the match requirement shall be a minimum of 15% for a taxpayer in the Anacostia Historic District.

(g) A taxpayer who has a household income of more than 90% of area median income shall be required to match the grant by contributing a minimum of 50% of the cost of the rehabilitation; except, that the match requirement shall be a minimum of 40% for a taxpayer in the Anacostia Historic District.

(h) The Mayor shall:

(1) Approve the scope of rehabilitation work prior to award of a grant;

(2) Ensure that all work is consistent with the purposes of this subchapter and implementing regulations; and,

(3) Award grants and disburse grant funds pursuant to rules and procedures the Mayor shall establish for this purpose.

(i)(1) The taxpayer shall enter into a preservation covenant with the State Historic Preservation Officer against the property on which the structure is located. The covenant shall run with the land and shall require that the rehabilitation improvements be maintained in good repair satisfactory to the State Historic Preservation Officer for 5 years after the date on which the grant is fully disbursed.

(2) If the taxpayer does not maintain the certified rehabilitation improvements in good repair for any period of time covered by the covenant, the Mayor may take any enforcement action authorized under this subchapter and may assess the amount of the grant as a tax on the property, and shall:

(A) Carry the tax on the regular tax rolls; and

(B) Collect the tax in the same manner as real property taxes are collected provided; that a lien shall not be valid as against any bona fide purchaser, or holder of a security interest, mechanic's lien, or other such creditor interested in the property, without notice, until notice by filing the lien in the Recorder of Deeds.

(j)(1) An action may be brought in the name of the District at any time within 3 years after the expiration of 60 days from the date that the tax was assessed to recover the amount of the unpaid tax.

(2) A lien shall be satisfied by payment of the amount of the lien to the State Historic Preservation Officer.

(k)(1) The Mayor shall deposit in the HLP Fund established in § 6-1110.01 any funds appropriated for the purposes of the Targeted Homeowner Grant Program.

(2) The Mayor may expend up to \$1.25 million of appropriated funds for this purpose each fiscal year. Any appropriated funds not expended during a fiscal year shall be used only for the same purpose in subsequent fiscal years.

(3) In each fiscal year, the Mayor may expend up to 5% of the amount of the funds authorized in that year for reasonable administrative costs.

(Mar. 3, 1979, D.C. Law 2-144, § 11b, as added Mar. 2, 2007, D.C. Law 16-189, § 2(c), 53 DCR 6786; Mar. 25, 2009, D.C. Law 17-353, § 128(b), 56 DCR 1117; Mar. 3, 2010, D.C. Law 18-111, § 2121, 57 DCR 181.)

Effect of amendments. — D.C. Law 17-353 validated a previously made technical correction in the section designation.

D.C. Law 18-111, in subsec. (k)(2), substituted “fiscal year” for “fiscal year, beginning from fiscal year 2006 through fiscal year 2010”; and, in subsec. (k)(2), deleted “applicable” following “each”.

Temporary Amendment of Section. — Section 2 of D.C. Law 17-277, in subsec. (e), added par. (3) to read as follows:

“(3) A grant made to a taxpayer pursuant to this section shall be excluded in the computation of District gross income.”

Section 5(b) of D.C. Law 17-277 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition, see § 2(c) of Targeted Historic Preservation Assistance Emergency Amendment Act of 2006 (D.C. Act 16-472, July 31, 2006, 53 DCR 6781).

For temporary (90 day) addition, see § 2(c) of Targeted Historic Preservation Assistance Congressional Review Emergency Act of 2006 (D.C. Act 16-500, October 23, 2006, 53 DCR 9046).

For temporary (90 day) amendment, see § 2 of Targeted Historic Housing Preservation As-

sistance Emergency Amendment Act of 2008 (D.C. Act 17-470, July 28, 2008, 55 DCR 8761).

For temporary (90 day) amendment of section, see § 2 of Targeted Historic Housing Preservation Assistance Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-546, October 20, 2008, 55 DCR 11434).

For temporary (90 day) amendment of section, see § 2121 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 2121 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 16-189. — For Law 16-189, see notes following § 6-1102.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 6-201.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 6-226.

Short title. — Short title: Section 2120 of D.C. Law 18-111 provided that subtitle M of title II of the act may be cited as the “Targeted Homeowner Grant Program Funding Amendment Act of 2009”.

Editor’s notes. — Section 7071 of D.C. Law 17-219 repealed section 4 of D.C. Law 16-189.

§ 6-1111. Insanitary and unsafe buildings.

(a) Nothing in this subchapter shall interfere with the authority of the Board for the Condemnation of Insanitary Buildings to put a building or structure into sanitary condition or to demolish it pursuant to the provisions of the Act of May 1, 1906 (Chapter 9 of this title); except, that no permit for the demolition of an historic landmark or building or structure in an historic district shall be issued to the owner except in accordance with the provisions of this subchapter.

(b) Nothing in this subchapter shall affect the authority of the District of Columbia to secure or remove an unsafe building or structure pursuant to the Act of March 1, 1899 (Chapter 8 of this title).

(c) Except as provided under subchapter II of Chapter 31C of Title 42, nothing in this subchapter shall affect the authority of the Mayor to enclose or demolish a structure under subchapter II of Chapter 31C of Title 42.

(Mar. 3, 1979, D.C. Law 2-144, § 12, 25 DCR 6939; Apr. 19 2002, D.C. Law

14-114, § 102, 49 DCR 1468; Oct. 19, 2002, D.C. Law 14-213, § 14, 49 DCR 8140.)

Prior Codifications. — 1981 Ed., § 5-1011. 1973 Ed., § 5-831.

Effect of amendments. — D.C. Law 14-114 added subsec. (c).

D.C. Law 14-213, in subsec. (c), validated previously made technical corrections.

Legislative history of Law 2-144. — For legislative history of D.C. Law 2-144, see Historical and Statutory Notes following § 6-1101.

Legislative history of Law 14-114. — For Law 14-114, see notes following § 6-802.

Legislative history of Law 14-213. — For Law 14-213, see notes following § 6-802.

Editor's notes. — Because of the codification of D.C. Law 5-69 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 11 as subchapter I, "subchapter" has been substituted for "chapter," where applicable, in this section.

CASE NOTES

Powers and duties.

Mayor's agent has no authority under the Preservation Act to order demolition of historic landmark in interest of health, safety, and welfare of community. D.C. Code 1981, § 5-1011(b). *District of Columbia Preservation League v. Department of Consumer & Regulatory Affairs*, 646 A.2d 984, 1994 D.C. App. LEXIS 138 (1994), amended by 1994 D.C. App. LEXIS 166 (D.C. Sept. 20, 1994).

Mayor's agent did not have authority to permit demolition of historical landmark under Preservation Act's "necessary in the public interest" standard, based on factors such as cost of refurbishing dilapidated structure and threat it posed to safety and welfare of community. D.C. Code 1981, § 5-1004(e). *District of Columbia Preservation League v. Department of Consumer & Regulatory Affairs*, 646 A.2d

984, 1994 D.C. App. LEXIS 138 (1994), amended by 1994 D.C. App. LEXIS 166 (D.C. Sept. 20, 1994).

After it was determined that mayor's agent exceeded his authority under Preservation Act in granting application to demolish historic landmark, mayor's agent was required on remand to either refer case to corporation counsel to initiate proceedings to require landowner to restore building to its former appearance, or to refer case to condemnation board for the condemnation of insanitary buildings so that it could begin condemnation proceedings under the Insanitary Buildings Act. D.C. Code 1981, §§ 5-705, 5-1010(b). *District of Columbia Preservation League v. Department of Consumer & Regulatory Affairs*, 646 A.2d 984, 1994 D.C. App. LEXIS 138 (1994), amended by 1994 D.C. App. LEXIS 166 (D.C. Sept. 20, 1994).

§ 6-1112. Administrative procedures.

(a) In any case of demolition, alteration, subdivision, or new construction in which a hearing was held, the Mayor's decision on such application shall not become final until 15 days after issuance. In all applications for which a hearing is held, the Mayor's decision must be issued within 120 days after the hearing record is closed, including the filing of any required post-hearing submissions.

(b) All proceedings pursuant to this subchapter shall be conducted in accordance with the applicable provisions of Chapter 5 of Title 2.

(Mar. 3, 1979, D.C. Law 2-144, § 13, 25 DCR 6939; Apr. 29, 1998, D.C. Law 12-86, § 503(c), 45 DCR 1172; Oct. 19, 2000, D.C. Law 13-172, § 403(b), 47 DCR 6308; June 19, 2001, D.C. Law 13-313, § 20(b), 48 DCR 1873.)

Prior Codifications. — 1981 Ed., § 5-1012. 1973 Ed., § 5-832.

Effect of amendments. — D.C. Law 13-172, in subsec. (a), substituted "120 days" for "60 days" and deleted ", or the application shall

be deemed approved by the Mayor" at the end of the second sentence, and in subsec. (b), struck the second and third sentences, which had read:

"The hearing by the Review Board upon the

filing of an application to designate a historic landmark shall be conducted under the contested case procedures contained in § 1-1509. Any final order of the Mayor under this act and any final order of the Review Board regarding the designation of a historic landmark shall be reviewable in the District of Columbia Court of Appeals."

D.C. Law 13-313, in subsec. (a), substituted "alteration, subdivision," for "subdivision".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see §§ 2, 3 of (D.C. Law 13-197, October 21, 2000, law notification 47 DCR 8987).

Emergency legislation. — For temporary (90-day) amendment of section, see § 403(b) of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90-day) amendment of section, see §§ 2(a), (b) and 3(a), (b) of the Fiscal Year 2001 Budget Support Emergency Amendment Act of 2000 (D.C. Act 13-381, July 24, 2000, 47 DCR 6695).

For temporary (90 day) amendment of section, see § 403(b) of the Fiscal Year 2001 Bud-

get Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 2-144. — For legislative history of D.C. Law 2-144, see Historical and Statutory Notes following § 6-1101.

Legislative history of Law 12-86. — For legislative history of D.C. Law 12-86, see Historical and Statutory Notes following § 6-1103.

Legislative history of Law 13-172. — For Law 13-172, see notes following § 6-1103.

Legislative history of Law 13-313. — For D.C. Law 13-313, see notes following § 6-1102.

Editor's notes. — Because of the codification of D.C. Law 5-69 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 11 as subchapter I, "subchapter" has been substituted for "chapter," where applicable, in this section.

Section 20(c) of D.C. Law 13-313, amends D.C. Law 13-172 by adding a new section 403a which provided:

"Sec. 403a. Applicability. Section 403(a) and (b)(1)(A) and (B) shall app only prospectively to hearings held by the Mayor or the Historic Preservation Board after the effective date of this title."

CASE NOTES

ANALYSIS

Due process.

Judicial review generally.

Mootness.

Notice of administrative decisions.

Right to hearing.

Standard of review.

Due process.

Historic Preservation Review Board did not abuse its discretion in denying church's request for continuance or additional time to supplement record, with respect to public hearing on community association's application for designation of historic district which included church's rowhouses; Board not only followed all applicable procedures but also made effort, beyond what was required by regulations, to accommodate interested property owners such as church. *Metropolitan Baptist Church v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 718 A.2d 119, 1998 D.C. App. LEXIS 159 (1998).

Mayor's agent was not required to disqualify herself on ground that failure to do so denied petitioner, which objected to permit for razing historical landmark in favor of development project, due process by appearance of unfairness arising from status of mayor's agent as employee of District of Columbia, combined with public support for project, where mayor's agent was not recipient of ex parte communica-

tions from advocate for one side of the issue, mayor's agent did not have personal interest or bias and there was no appearance of unfairness. D.C. Code 1980 Supp. § 5-821 et seq. *Citizens Committee to Save Historic Rhodes Tavern v. District of Columbia Dep't of Housing etc.*, 432 A.2d 710, 1981 D.C. App. LEXIS 304 (1981), writ of certiorari denied by 454 U.S. 1054, 102 S. Ct. 599, 70 L. Ed. 2d 590, 1981 U.S. LEXIS 4517, 50 U.S.L.W. 3402 (1981).

Judicial review generally.

In making the necessary findings regarding application to make improvements in historic district, mayor's agent is not required to explain why he or she favored one witness' testimony over another, or one statistic over another; however, some indication of the reason for rejecting expert, as opposed to lay, testimony is required. *Gondelman v. D.C. Dep't of Consumer & Regulatory Affairs*, 789 A.2d 1238, 2002 D.C. App. LEXIS 11 (2002).

Decision of agency whether to hold hearing in course of determining legislative facts, and, if such hearing is held, its nature and extent, is afforded markedly greater deference than when agency conducts hearing in adjudicatory, contested-case situation. *Metropolitan Baptist Church v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 718 A.2d 119, 1998 D.C. App. LEXIS 159 (1998).

Court must be extremely deferential to agency's decision to grant or deny continuance or

otherwise accommodate interested party's demand for additional time in quasi-legislative matters; standard of review is still abuse of discretion, as in adjudicatory context, but range of discretion is even wider than in trial-type hearing. *Metropolitan Baptist Church v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 718 A.2d 119, 1998 D.C. App. LEXIS 159 (1998).

Church's claim that inclusion of church's rowhouses in historic district, which inclusion subjected rowhouses to permitting requirements for renovation, violated free exercise clause was not ripe for adjudication, where church had not submitted permit application or attempted to assemble application; specific requirements of any application, or time and expense necessary to prepare it, could not be determined as legal matter, it was not clear that church's "Vision 2000" program had advanced to such stage that church had developed immediate concrete plan for renovating rowhouses, effect of being subjected to permit requirements was undetermined, and requisite "certainty and effect" of alleged hardship did not exist. U.S. Const. Amend. 1; D.C. Code 1981, §§ 5-1004, 5-1005. *Metropolitan Baptist Church v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 718 A.2d 119, 1998 D.C. App. LEXIS 159 (1998).

When reviewing contested cases, Superior Court must review administrative record alone and not duplicate agency proceedings or hear additional evidence. *Metropolitan Baptist Church v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 718 A.2d 119, 1998 D.C. App. LEXIS 159 (1998).

As discretionary matter, trial court was under no obligation to consider church's exhibits, which included newsletter, minutes from church meetings, and architectural drawings, as probative of Historic Preservation Review Board's alleged error in refusing to continue hearing on community association's application for designation of historic district which included church's rowhouses, where exhibits were not brought to Board's attention in timely manner. *Metropolitan Baptist Church v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 718 A.2d 119, 1998 D.C. App. LEXIS 159 (1998).

District of Columbia Historic Preservation Review Board proceeding to determine whether landowner's properties should be designated as historic landmarks was not "contested case," and thus, Court of Appeals had no jurisdiction to review Board's order designating properties as landmarks; no administrative hearing on matter was either statutorily or constitutionally compelled. D.C. Code 1981, §§ 1-1502(8), 1-1510(a). *Donnelly Associates v. District of Columbia Historic Preservation Review Bd.*,

520 A.2d 270, 1987 D.C. App. LEXIS 270 (1987).

In order to superimpose the substantial evidence requirement upon the Historic Preservation Review Board, the court must be able to determine that the Board's proceedings are tantamount to a trial-type hearing or adjudication—in other words, a contested case, in which there is a right to a trial-type hearing explicitly granted in the agency's organic act or where such a hearing is required by the United States Constitution. Section 5-1003, which controls the nomination of historic district, does not specifically require a trial-type hearing as to any affected person or other interested party, and there are constitutionally adequate procedures already available to an affected property owner who is individually aggrieved at some later time after the Board has designated the landmark. *Dwyer v. District of Columbia*, 120 WLR 2609 (Super. Ct. 1992).

Mootness.

Historic Preservation Review Board's (HPRB's) rejection of hotel developer's conceptual design proposal did not render moot developer's application for special exceptions and variances from the Board of Zoning Adjustment (BZA); HPRB's conceptual design reviews were not binding, and ultimate authority for approving application for construction in historic areas rested with Mayor's agent, not the HPRB, such that HPRB's approval of the plans was not required. *N. St. Follies, Ltd. P'shp v. D.C. Bd. of Zoning Adjustment*, 949 A.2d 584, 2008 D.C. App. LEXIS 260 (2008).

Notice of administrative decisions.

For purposes of time limits for seeking judicial review, party received "formal notice" of administrative board's decision only when party received written decision, not when board rendered decision orally in presence of parties; board's own rules provided for issuance of written decision, and provided that decision would become final "when copies are mailed to the parties." Court of Appeals Rule 15(a); Rule 15(b)(1974). *Donnelly Associates v. District of Columbia Historic Preservation Review Bd.*, 520 A.2d 270, 1987 D.C. App. LEXIS 270 (1987).

Right to hearing.

There is no statutory or constitutional right to hearing before Historic Preservation Review Board when it is in process of designating historic districts. *Metropolitan Baptist Church v. District of Columbia Dep't of Consumer & Regulatory Affairs*, 718 A.2d 119, 1998 D.C. App. LEXIS 159 (1998).

In deciding whether to designate the area historic and, if so, where to draw boundaries, Historic Preservation Review Board is making policy decision directed toward general public,

which is “legislative” process, rather than weighing particular information and arriving at decision directed at rights of specific individuals, which is “adjudicatory” process. *Metropolitan Baptist Church v. District of Columbia Dep’t of Consumer & Regulatory Affairs*, 718 A.2d 119, 1998 D.C. App. LEXIS 159 (1998).

Landowner was not statutorily entitled to hearing before his property was listed as historic landmark by District of Columbia Historic Preservation Review Board. D.C. Code 1981, §§ 1-1501 et seq., 5-1003(c)(3). *Donnelly Associates v. District of Columbia Historic Preservation Review Bd.*, 520 A.2d 270, 1987 D.C. App. LEXIS 270 (1987).

Landowner was not constitutionally entitled to full trial-type hearing prior to designation of its property as historic landmark by District of Columbia Historic Preservation Review Board. D.C. Code 1981, §§ 1-1501 et seq., 5-1003(c)(3); U.S. Const. Amend. 5. *Donnelly Associates v. District of Columbia Historic Preservation Review Bd.*, 520 A.2d 270, 1987 D.C. App. LEXIS 270 (1987).

Standard of review.

When mayor’s agent’s decision regarding application to make improvements in historic district is based on interpretation of statute and regulations the mayor’s agent administers, that interpretation will be sustained unless shown to be unreasonable or in contravention of language of legislative history of the Historic

District Protection Act. *Gondelman v. D.C. Dep’t of Consumer & Regulatory Affairs*, 789 A.2d 1238, 2002 D.C. App. LEXIS 11 (2002).

Beyond ensuring compliance with applicable statute and regulations, Court of Appeals is not in a position to micromanage Historic Preservation Review Board’s conduct of its responsibilities. *Metropolitan Baptist Church v. District of Columbia Dep’t of Consumer & Regulatory Affairs*, 718 A.2d 119, 1998 D.C. App. LEXIS 159 (1998).

To uphold order issued by mayor’s agent under the Preservation Act, Court of Appeals must determine that agent’s written factual findings are supported by substantial evidence in record and that agent’s legal conclusions flow rationally from those findings. D.C. Code 1981, §§ 5-1001 to 5-1015. *District of Columbia Preservation League v. Department of Consumer & Regulatory Affairs*, 646 A.2d 984, 1994 D.C. App. LEXIS 138 (1994), amended by 1994 D.C. App. LEXIS 166 (D.C. Sept. 20, 1994).

Decision of the mayor’s agent in hearing held pursuant to Historic Landmark and the Historic District Protection Act of 1978 to determine whether to issue a permit to demolish building designated as an historic landmark will be upheld on appeal unless it appears from record that there is obvious and egregious error. D.C. Code 1980 Supp. § 5-821 et seq. 900 G. 900 G Street Associates v. Department of Housing & Community Dev., 430 A.2d 1387, 1981 D.C. App. LEXIS 308 (1981).

§ 6-1113. Annual report.

By April 1 of each year, the Mayor shall transmit to the Council a detailed report on the implementation of this subchapter, including:

(1) The number of applications reviewed pursuant to §§ 6-1104, 6-1105, 6-1106, and 6-1107 for historic landmarks and each historic district, categorized by type of application;

(2) The number of such applications granted after a public hearing; specifying for each such application the nature of the requested permit, the nature of the applicant’s claim, whether or not economic hardship was found, whether or not it was found to be in the public interest and on what grounds; and

(3) The financial condition of the HLP Fund, including:

(A) The results of the operations and collections for the preceding fiscal year;

(B) An accounting of receipts and expenditures;

(C) An itemization of the amounts of unrecovered costs, taxes, and penalties;

(D) The names of delinquent property owners; and

(E) The nature of corrected building violations.

(Mar. 3, 1979, D.C. Law 2-144, § 14, 25 DCR 6939; Nov. 16, 2006, D.C. Law 16-185, § 2(q), 53 DCR 6712.)

Prior Codifications. — 1981 Ed., § 5-1013. 1973 Ed., § 5-833.

Legislative history of Law 2-144. — For legislative history of D.C. Law 2-144, see Historical and Statutory Notes following § 6-1101.

Legislative history of Law 16-185. — For Law 16-185, see notes following § 6-1101.

Editor's notes. — Because of the codification of D.C. Law 5-69 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 11 as subchapter I, "subchapter" has been substituted for "chapter," where applicable, in this section.

§ 6-1114. Severability.

The sections of this subchapter are hereby declared to be severable. In the event that any section of this subchapter or portion thereof is held void or unenforceable for whatever reason, all remaining provisions shall remain in full force and effect.

(Mar. 3, 1979, D.C. Law 2-144, § 16, 25 DCR 6939.)

Prior Codifications. — 1981 Ed., § 5-1014. 1973 Ed., § 5-834.

Legislative history of Law 2-144. — For legislative history of D.C. Law 2-144, see Historical and Statutory Notes following § 6-1101.

Editor's notes. — Because of the codifica-

tion of D.C. Law 5-69 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 11 as subchapter I, "subchapter" has been substituted for "chapter," where applicable, in this section.

§ 6-1115. Effective date.

This subchapter shall become effective as provided for acts of the Council of the District of Columbia in § 1-206.02(c)(1). Notwithstanding any other provision of law, upon the effective date of this subchapter, all pending applications for permits shall be subject to this subchapter and no outstanding permits shall be renewed or reissued except in accordance with the provisions of this subchapter.

(Mar. 3, 1979, D.C. Law 2-144, § 17, 25 DCR 6939.)

Prior Codifications. — 1981 Ed., § 5-1015. 1973 Ed., § 5-835.

Legislative history of Law 2-144. — For legislative history of D.C. Law 2-144, see Historical and Statutory Notes following § 6-1101.

Editor's notes. — Because of the codifica-

tion of D.C. Law 5-69 as subchapter II of this chapter, and the designation of the preexisting text of Chapter 11 as subchapter I, "subchapter" has been substituted for "chapter," where applicable, in this section.

Subchapter II. Historic Rhodes Tavern.

§ 6-1131. Declaration of policy.

It is by the People declared the public policy of the District of Columbia to support, advocate, and promote the preservation, restoration, and reuse of the Historic Rhodes Tavern on its present site at the northeast corner of 15th and F Streets, Northwest in the District of Columbia. The objectives of this policy are: To preserve, restore, and reuse Rhodes Tavern on its present site; to protect the District of Columbia's historic, political, cultural, social, economic, and architectural heritage as reflected and embodied in Rhodes Tavern, which is listed on the National Register of Historic Places and which is a Category II

Landmark on the District of Columbia's Inventory of Historic Sites; to foster civic pride in the noble accomplishments of the past, including the efforts of citizens who met at Rhodes Tavern, the City of Washington's first town hall, in 1801 to debate and draft petitions in the continuing struggle for self-government and representation in Congress; to recognize the role of Rhodes Tavern as a polling place in the first municipal elections in the City of Washington on June 7, 1802; to commemorate other meetings held at Rhodes Tavern which resulted in the establishment of the City of Washington's first public school, theatre, and market place; to enhance the District of Columbia's attraction to tourists and visitors and the support and stimulus to the economy thereby provided; to promote the use of Rhodes Tavern for the education, pleasure, and welfare of the people of the District of Columbia; and to establish a central landmark for the District of Columbia that will symbolize its local and national historic origins, continuity and identity.

(Mar. 15, 1984, D.C. Law 5-69, § 2, 31 DCR 445.)

Section references. — This section is referred to in §§ 6-1132 and 6-1133.

Prior Codifications. — 1981 Ed., § 5-1021.

Legislative history of Law 5-69. — Law 5-69, the "District of Columbia Historic Rhodes Tavern Preservation Initiative of 1982," was submitted to the electors of the District of Columbia on November 8, 1983, as Initiative

No. 11. The results of the voting, certified by the Board of Elections and Ethics on November 21, 1983, were 22,977 for the Initiative and 15,420 against the Initiative. It was transmitted to Congress on January 24, 1984, published in the D.C. Register on February 3, 1984, and became law on March 15, 1984.

CASE NOTES

ANALYSIS

Attorney fees.
Injunctive relief.
Standing.

Attorney fees.

Citizens prevailed, for purposes of Civil Rights Attorney's Fees Awards Act, 42 U.S.C. § 1988, in their litigation for temporary restraining order and two-stage injunction against District of Columbia's issuance of permit to demolish historic tavern, where they succeeded in ensuring that voting on initiative on the demolition would take place while tavern still stood, notwithstanding mootness of subsequent appeal of that holding following actual election and passage of initiative. Grano

v. Barry, 783 F.2d 1104, 1986 U.S. App. LEXIS 22178 (C.A.D.C. 1986).

Injunctive relief.

Preliminary injunction was granted to prevent issuance of permit that would allow demolition of Rhodes Tavern pending a full hearing on the merits of whether the building can be razed by its owner. Citizens Comm. v. Barry, 112 WLR 1653 (Super. Ct.).

Standing.

Plaintiffs, Citizens Committee to Save Historic Rhodes Tavern and individual citizens, have standing to sue and a private cause of action to enforce the District of Columbia Historic Rhodes Tavern Preservation Initiative of 1982. Citizens Comm. v. Barry, 112 WLR 1653 (Super. Ct.).

§ 6-1132. Establishment of Advisory Board.

The Mayor, with the advice and consent of the Council, shall appoint an uncompensated Historic Rhodes Tavern Advisory Board of 7 residents of the District of Columbia. The Board shall be composed of 2 historians with expertise in local District of Columbia history, an architect, an architectural historian, an attorney, an economist with expertise in the field of real estate development, and a lay person. Board members shall be appointed to 2-year

§ 6-1133 HOUSING & BUILDING RESTRICTIONS & REGULATIONS

terms. The Board shall continue in existence until the Mayor and the Council determine that the objectives of the policy declared in § 6-1131 have been fully attained, and that the Board has fulfilled its duties as outlined in § 6-1133.

(Mar. 15, 1984, D.C. Law 5-69, § 3, 31 DCR 445.)

Prior Codifications. — 1981 Ed., § 5-1022. legislative history of D.C. Law 5-69, see Historical and Statutory Notes following § 6-1131.
Legislative history of Law 5-69. — For

§ 6-1133. Duties of Advisory Board.

The Board shall:

(1) Negotiate with the owners of the Rhodes Tavern to determine whether said owners will enter into an agreement to fulfill the objectives declared in § 6-1131. If the Board determines that such an agreement cannot be achieved, then the Board will prepare a report to the Mayor and the Council outlining actions that should be taken by the District of Columbia government to implement the policy declared in § 6-1131;

(2) Prepare reports and information for the Mayor and Council concerning:

(A) How Rhodes Tavern can be preserved, restored, reused, and integrated into any proposed development;

(B) A complete documented history of Rhodes Tavern; and

(C) Any other matter which the Board deems appropriate;

(3) Prepare an application nominating Rhodes Tavern as a Category I Landmark on The District of Columbia's Inventory of Historic Sites; and

(4) Undertake any other activities which it determines are appropriate to achieve the objectives of the policy declared in § 6-1131.

(Mar. 15, 1984, D.C. Law 5-69, § 4, 31 DCR 445.)

Section references. — This section is referred to in § 6-1132.

Prior Codifications. — 1981 Ed., § 5-1023.

Legislative history of Law 5-69. — For legislative history of D.C. Law 5-69, see Historical and Statutory Notes following § 6-1131.

CASE NOTES

Standing.

Plaintiffs, Citizens Committee to Save Historic Rhodes Tavern and individual citizens, have standing to sue and a private cause of

action to enforce the District of Columbia Historic Rhodes Tavern Preservation Initiative of 1982. *Citizens Comm. v. Barry*, 112 WLR 1653 (Super. Ct.).

Subchapter III. New Washington Convention Center Neighborhood Stability.

§§ 6-1151 to 6-1157. [Expired].

(Apr. 29, 1998, D.C. Law 12-93, § 2, 45 DCR 1316.)

Prior Codifications. — 1981 Ed., §§ 5-1031 to 5-1037.

Emergency legislation. — For temporary

addition of subchapter, see §§ 2 through 8 of the New Washington Convention Center Neighborhood Stability Emergency Act of 1997

(D.C. Act 12-238, January 13, 1998, 45 DCR 503).

See Historical and Statutory Notes following § 6-1131.

Legislative history of Law 12-93. — Law 12-93, the “New Washington Convention Center Neighborhood Stability Act of 1998,” was introduced in Council and assigned Bill No. 12-449, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 16, 1997, and January 6, 1998, respectively. Signed by the Mayor on January 26, 1998, it was assigned Act

No. 12-266 and transmitted to both Houses of Congress for its review. D.C. Law 12-93 became effective on April 29, 1998.

Legislative history of Law 12-93. — For legislative history of D.C. Law 12-93, see Historical and Statutory Notes following § 6-1131.

Editor’s notes. — D.C. Law 12-93, § 10(b) (45 DCR 1316), eff. April 29, 1998, provided: “(b) This act shall remain in effect for a period not to exceed 18 months from the effective date of this act.”

Sections 6-1151 to 6-1157 expired effective October 30, 1999.

CHAPTER 12. PRESERVATION OF HISTORIC PLACES AND AREAS IN THE
GEORGETOWN AREA.

| | |
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| Sec. | Sec. |
| 6-1201. "Old Georgetown" district created. | 6-1205. Construction. |
| 6-1202. Restrictions on alteration of buildings. | 6-1206. Old Georgetown Market declared his- toric landmark. |
| 6-1203. Board of Review established. | 6-1207. Appropriations to carry out § 6-1206. |
| 6-1204. Survey of Old Georgetown district au- thorized. | |

§ 6-1201. "Old Georgetown" district created.

There is hereby created in the District of Columbia a district known as "Old Georgetown" which is bounded on the east by Rock Creek and Potomac Parkway from the Potomac River to the north boundary of Dumbarton Oaks Park, on the north by the north boundary of Dumbarton Oaks Park, Whitehaven Street and Whitehaven Parkway to 35th Street, south along the middle of 35th Street to Reservoir Road, west along the middle of Reservoir Road to Archbold Parkway, on the west by Archbold Parkway from Reservoir Road to the Potomac River, on the south by the Potomac River to the Rock Creek Parkway.

(Sept. 22, 1950, 64 Stat. 903, ch. 984, § 1.)

Section references. — This section is referred to in §§ 6-1104, 6-1105, 6-1107, 6-1202, 10-1121.04, and 10-1121.11.

Prior Codifications. — 1981 Ed., § 5-1101.
1973 Ed., § 5-801.

§ 6-1202. Restrictions on alteration of buildings.

In order to promote the general welfare and to preserve and protect the places and areas of historic interest, exterior architectural features, and examples of the type of architecture used in the National Capital in its initial years, the Mayor of the District of Columbia, before issuing any permit for the construction, alteration, reconstruction, or razing of any building within said Georgetown district described in § 6-1201, shall refer the plans to the National Commission of Fine Arts for a report as to the exterior architectural features, height, appearance, color, and texture of the materials of exterior construction which is subject to public view from a public highway. The National Commission of Fine Arts shall report promptly to said Mayor of the District of Columbia its recommendations, including such changes, if any, as in the judgment of the Commission are necessary and desirable to preserve the historic value of said Georgetown district. The said Mayor shall take such actions as in his judgment are right and proper in the circumstances; provided, that, if the said Commission of Fine Arts fails to submit a report on such plans within 45 days, its approval thereof shall be assumed and a permit may be issued.

(Sept. 22, 1950, 64 Stat. 904, ch. 984, § 2.)

Section references. — This section is referred to in §§ 10-1121.04 and 10-1121.11.

Prior Codifications. — 1981 Ed., § 5-1102. 1973 Ed., § 5-802.

Delegation of Authority. — Delegation of Authority Under the "Shipstead-Luce Act", see Mayor's Order 89-92, May 9, 1989.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorga-

nization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Administrative procedure generally.
Effect of recommendations.

Administrative procedure generally.

Opinion which was filed by the mayor's agent in authorizing construction of a mixed use development on the Georgetown waterfront and which was to effect that, contrary to the objection raised by the Commission of Fine Arts based on project's density and mass, project would create no obstruction to views of the river nor dominate or overshadow the historic district from the south was sufficient to show that the mayor's agent not only summarized the concerns and recommendations of the Commission in her findings, but also addressed them in sufficient detail and provided a reasoned explanation for her disagreement with those views. D.C. Code 1981, §§ 5-1007(b), 5-1102. Committee for Washington's Riverfront Parks v. Thompson, 451 A.2d 1177, 1982 D.C. App. LEXIS 451 (1982).

The mayor's agent did not fail to articulate the standard by which she assessed the compatibility of the developer's design for the contemplated mixed use development on the Georgetown waterfront and did not act arbitrarily and capriciously in concluding that the design was compatible with the historic district. D.C. Code 1981, §§ 5-1007(b), 5-1102. Committee for Washington's Riverfront Parks v. Thompson, 451 A.2d 1177, 1982 D.C. App. LEXIS 451 (1982).

Substantial evidence warranted finding of the mayor's agent that the design of the contemplated mixed development project on the Georgetown waterfront was compatible with not only twentieth century structures but also with older historic buildings in the area. D.C. Code 1981, §§ 5-1007(b), 5-1102. Committee for Washington's Riverfront Parks v. Thompson, 451 A.2d 1177, 1982 D.C. App. LEXIS 451 (1982).

The mayor's agent was required in hearings on proposed waterfront development project to make findings of fact based on substantial evidence on each material contested issue and then to reach the conclusion based on those findings; mere restatements of the testimony of witnesses or recitations of evidence were insufficient substitutes for specific findings, but if the findings could be sifted from the restatement of evidence so that there were still findings on the material contested issues, the findings would not be set aside as amounting to mere restatements of testimony. D.C. Code 1981, §§ 5-1007(b), 5-1102. Committee for Washington's Riverfront Parks v. Thompson, 451 A.2d 1177, 1982 D.C. App. LEXIS 451 (1982).

Effect of recommendations.

The provisions of the Old Georgetown Act and the Historic Protection Act did not explicitly require that the mayor's agent accord special weight to the expert recommendation of the Commission of Fine Arts in ruling on proposed waterfront development, but in light of the Commission's expertise and the statutory mandate that the mayor's agent consider its recommendation, the mayor's agent was required to demonstrate that the Commission's recommendation and concerns were considered in order to allow meaningful judicial review and to ensure that statutory requirements had been met. D.C. Code 1981, §§ 5-1007(b), 5-1102. Committee for Washington's Riverfront Parks v. Thompson, 451 A.2d 1177, 1982 D.C. App. LEXIS 451 (1982).

Even though Commission of Fine Arts had determined that subject structures did not contribute to historic district, referral to Joint Committee on Landmarks of the National Capital for review of public utility's application for demolition permit was proper, since District of Columbia Historic Landmark and Historic District Protection Act provided for discretionary

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duplicative review and, in so doing, posed no constitutional problem. D.C. Code §§ 5-801 et seq., 5-821 to 5-835. *Don't Tear It Down, Inc. v. D. C. Dep't of Housing & Community Development*, 428 A.2d 369, 1981 D.C. App. LEXIS 238 (1981).

The function of the Commission of Fine Arts

pursuant to the Old Georgetown Act is solely advisory, and final authority for issuing permits rests with the Mayor. D.C. Code §§ 5-801 et seq., 5-821 to 5-835. *Don't Tear It Down, Inc. v. D. C. Dep't of Housing & Community Development*, 428 A.2d 369, 1981 D.C. App. LEXIS 238 (1981).

§ 6-1203. Board of Review established.

In carrying out the purpose of this chapter, the Commission of Fine Arts is hereby authorized to appoint a committee of 3 architects, who shall serve as a Board of Review without expense to the United States and who shall advise the Commission of Fine Arts, in writing, regarding designs and plans referred to it.

(Sept. 22, 1950, 64 Stat. 904, ch. 984, § 3.)

Section references. — This section is referred to in §§ 10-1121.04 and 10-1121.11.

Prior Codifications. — 1981 Ed., § 5-1103. 1973 Ed., § 5-803.

§ 6-1204. Survey of Old Georgetown district authorized.

Said Mayor of the District of Columbia, with the aid of the National Park Service and of the National Capital Planning Commission, shall make a survey of the "Old Georgetown" area for the use of the Commission of Fine Arts and of the building permit office of the District of Columbia, such survey to be made at a cost not exceeding \$8,000, which amount is hereby authorized.

(Sept. 22, 1950, 64 Stat. 904, ch. 984, § 4.)

Section references. — This section is referred to in §§ 10-1121.04 and 10-1121.11.

Prior Codifications. — 1981 Ed., § 5-1104. 1973 Ed., § 5-804.

Transfer of Functions. — "National Capital Planning Commission" was substituted for "National Park and Planning Commission" in this section in view of the Act of June 6, 1924, ch. 270, § 9, as added by the Act of July 19, 1952, 66 Stat. 790, ch. 949, § 1, which transferred the functions, powers and duties of the National Capital Park and Planning Commission to the National Capital Planning Commission.

Delegation of Authority. — Delegation of Authority Under the "Shipstead-Luce Act", see Mayor's Order 89-92, May 9, 1989.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commis-

sioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 6-1205. Construction.

Nothing contained in this chapter shall be construed as superseding or affecting in any manner any act of Congress heretofore enacted relating to the alteration, repair, or demolition of insanitary or unsafe dwellings or other structures.

(Sept. 22, 1950, 64 Stat. 904, ch. 984, § 5.)

Section references. — This section is referred to in §§ 10-1121.04 and 10-1121.11.

Prior Codifications. — 1981 Ed., § 5-1105. 1973 Ed., § 5-805.

§ 6-1206. Old Georgetown Market declared historic landmark.

That the real property, together with all structures thereon on September 21, 1966, described as lot 800, square 1186, of the District of Columbia, commonly known as the Old Georgetown Market, is hereby declared a historic landmark, and the Mayor of the District of Columbia is authorized and directed to preserve such property as a historic landmark and to operate and maintain it as a public market, except that the Mayor is authorized to enter into an agreement with the Secretary of the Interior to provide for the use of a portion of such property as a museum to be operated by the Secretary in connection with the Chesapeake and Ohio Canal. Such property shall not be used under authority of any provision of law for any purpose not provided in this section unless:

(1) Such law is enacted after September 21, 1966; and

(2) Specifically authorizes such property to be used for such other purpose.

(Sept. 21, 1966, 80 Stat. 829, Pub. L. 89-600, § 1.)

Section references. — This section is referred to in § 6-1207.

Prior Codifications. — 1981 Ed., § 5-1106. 1973 Ed., § 5-806.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 6-1207. Appropriations to carry out § 6-1206.

For the purpose of carrying out the provisions of § 6-1206, there are authorized to be appropriated to the District of Columbia such sums as may be necessary.

(Sept. 21, 1966, 80 Stat. 830, Pub. L. 89-600, § 2; Jan. 5, 1971, 84 Stat. 1938, Pub. L. 91-650, title VII, § 701.)

Prior Codifications. — 1981 Ed., § 5-1107. 1973 Ed., § 5-807.

Temporary Addition of Section. — For temporary (225 day) addition, see § 2 of Preservation of Residential Neighborhoods Against

Nuisances Temporary Act of 1996 (D.C. Law 11-209, April 9, 1997, law notification 44 DCR).

Emergency legislation. — For temporary addition, see § 2 of the Preservation of Residential Neighborhoods Against Nuisances

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Emergency Act of 1996 (D.C. Act 11-352, August 12, 1996, 43 DCR 4626), and § 2 of the Preservation of Residential Neighborhoods Against Nuisances Congressional Review Emergency Act of 1996 (D.C. Act 11-412, October 28, 1996, 43 DCR 6068).

CHAPTER 13. REGULATION OF FOREIGN MISSIONS.

Sec.

- 6-1301. Congressional findings and policy.
- 6-1302. Definitions.
- 6-1303. Office of Foreign Missions.
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- 6-1306. Location in District.
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Sec.

- 6-1309. Application to international organizations.
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- 6-1313. Extraordinary protective services.
- 6-1314. Use of foreign mission in a manner incompatible with its status as a foreign mission.
- 6-1315. Application of travel restrictions to personnel of certain countries and organizations.

§ 6-1301. Congressional findings and policy.

(a) The Congress finds that the operation in the United States of foreign missions and public international organizations and the official missions to such organizations, including the permissible scope of their activities and the location and size of their facilities, is a proper subject for the exercise of federal jurisdiction.

(b) The Congress declares that it is the policy of the United States to support the secure and efficient operation of United States missions abroad, to facilitate the secure and efficient operation in the United States of foreign missions and public international organizations and the official missions to such organizations, and to assist in obtaining appropriate benefits, privileges, and immunities for those missions and organizations and to require their observance of corresponding obligations in accordance with international law.

(c) The treatment to be accorded to a foreign mission in the United States shall be determined by the Secretary after due consideration of the benefits, privileges, and immunities provided to missions of the United States in the country or territory represented by that foreign mission, as well as matters relating to the protection of the interests of the United States.

(Aug. 24, 1982, 96 Stat. 283, Pub. L. 97-241, § 202(b); Aug. 16, 1985, 99 Stat. 405, Pub. L. 99-93, § 127(a).)

Section references. — This section is referred to in § 6-1309.

Prior Codifications. — 1981 Ed., § 5-1201.

Effective date. — Section 204 of Public Law 97-241 provided that the amendments made by title II shall take effect on October 1, 1982.

CASE NOTES

ANALYSIS

Construction with zoning laws.
In general.

Construction with zoning laws.

Foreign Missions Act (FMA) granted District of Columbia Foreign Missions Act-Board of

Zoning Adjustment (DCFMA-BZA) exclusive original jurisdiction over zoning determinations governing location, replacement or expansion of chancery, and thereby preempted any provisions of District of Columbia zoning laws otherwise applicable to such issues, rather than granting only appellate jurisdiction for all zon-

ing issues relating to chancery beyond initial placement. Foreign Missions Act, § 206(a), (c)(1, 3), as amended, 22 U.S.C. § 4306(a), (c)(1, 3). *Sheridan Kalorama Historical Ass'n v. Christopher*, 49 F.3d 750, 1995 U.S. App. LEXIS 4668 (C.A.D.C. 1995).

Foreign Missions Act provided exclusive procedure available for consideration of foreign embassy's application to construct 38-foot antenna tower at site of chancery in District of Columbia for operation of diplomatic radio station, and, thus, board of zoning adjustment was without jurisdiction to review application solely under District of Columbia law. D.C. Code 1981, § 5-424; D.C. Code 1987 Supp., §§ 5-1201 et seq., 5-1201(a), 5-1202(a)(2), 5-1206, 5-1206(i); Foreign Missions Act, §§ 201 et seq., 201(a), 202, 202(a)(2), 203, 206, 206(d, i), as amended, 22 U.S.C. §§ 4301 et seq., 4301(a), 4302, 4302(a)(2), 4303, 4306, 4306(d, i). *Embassy of People's Republic of Benin v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 310, 1987 D.C. App. LEXIS 507 (1987).

In general.

Foreign Missions Act applied to foreign embassy's application for special exception to construct 38-foot antenna tower at site of chancery in District of Columbia for operation of diplomatic radio station. D.C. Code 1981, § 5-424; D.C. Code 1987 Supp., §§ 5-1201 et seq., 5-1201(a), 5-1202(a)(2), 5-1206, 5-1206(i); Foreign Missions Act, §§ 201 et seq., 201(a), 202, 202(a)(2), 203, 206, 206(d, i), as amended, 22

U.S.C. §§ 4301 et seq., 4301(a), 4302, 4302(a)(2), 4303, 4306, 4306(d, i). *Embassy of People's Republic of Benin v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 310, 1987 D.C. App. LEXIS 507 (1987).

Foreign embassy's reliance on advice of United States State Department about how to proceed to obtain local permits to construct 38-foot antenna tower at site of chancery in District of Columbia for operation of diplomatic radio station was appropriate and did not constitute waiver of rights under Foreign Missions Act. D.C. Code 1987 Supp., 5-1201 et seq.; Foreign Missions Act, §§ 201 et seq., 202, 203, as amended, 22 U.S.C. §§ 4301 et seq., 4302, 4303. *Embassy of People's Republic of Benin v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 310, 1987 D.C. App. LEXIS 507 (1987).

Language in Taiwan Relations Act, providing that United States laws would apply to Taiwan in same manner that they applied when two countries enjoyed full diplomatic relations, also governed instrumentalities of Taiwan; accordingly, instrumentality of Taiwan was not free to elect whether its variance application would be treated as one for "chancery" use. *Taiwan Relations Act*, § 4(a), 22 U.S.C. § 3303(a); Foreign Missions Act, § 202(a)(2), as amended, 22 U.S.C. § 4302(a)(2); D.C. Code 1981, § 5-1201 et seq. *Dupont Circle Citizens Asso. v. District of Columbia Bd. of Zoning Adjustment*, 530 A.2d 1163, 1987 D.C. App. LEXIS 435 (1987).

§ 6-1302. Definitions.

(a) For purposes of this chapter:

(1) "Benefit" (with respect to a foreign mission) means any acquisition, or authorization for an acquisition, in the United States by or for a foreign mission, including the acquisition of: (A) real property by purchase, lease, exchange, construction, or otherwise; (B) public services, including services relating to customs, importation, and utilities, and the processing of applications or requests relating to public services; (C) supplies, maintenance, and transportation; (D) locally engaged staff on a temporary or regular basis; (E) travel and related services; and (F) protective services; and includes such other benefits as the Secretary may designate;

(2) "Chancery" means the principal offices of a foreign mission used for diplomatic or related purposes, and annexes to such offices (including ancillary offices and support facilities), and includes the site and any building on such site which is used for such purposes;

(3) "Director" means the Director of the Office of Foreign Missions established pursuant to § 6-1303(a);

(4) "Foreign mission" means any mission to or agency in the United States involving diplomatic, consular, or other governmental activities of: (A) a foreign government; or (B) an organization (other than an international organization, as defined in § 6-1309(b)) representing a territory or political

entity which has been granted diplomatic or other official privileges and immunities under the laws of the United States or which engages in some aspect of the conduct of the international affairs of such territory or political entity; including any real property of such a mission and including the personnel of such a mission;

(5) "Real property" includes any right, title, or interest in or to, or the beneficial use of, any real property in the United States, including any office or other building;

(6) "Secretary" means the Secretary of State;

(7) "Sending state" means the foreign government, territory, or political entity represented by a foreign mission; and

(8) "United States" means, when used in a geographic sense, the several states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

(b) Determinations with respect to the meaning and applicability of the terms used in subsection (a) of this section shall be committed to the discretion of the Secretary.

(Aug. 24, 1982, 96 Stat. 283, Pub. L. 97-241, § 202; Aug. 16, 1985, 99 Stat. 405, Pub. L. 99-93, § 127(b).)

Section references. — This section is referred to in §§ 6-1307 and 6-1309.01.

Prior Codifications. — 1981 Ed., § 5-1202.

Effective date. — For effective date of

amendment made by title II of Pub. L. 97-241, Historical and Statutory Notes following § 6-1301.

CASE NOTES

ANALYSIS

Chancery.

Foreign mission.

Chancery.

Foreign Missions Act applied to foreign embassy's application for special exception to construct 38-foot antenna tower at site of chancery in District of Columbia for operation of diplomatic radio station. D.C. Code 1981, § 5-424; D.C. Code 1987 Supp., §§ 5-1201 et seq., 5-1201(a), 5-1202(a)(2), 5-1206, 5-1206(i); Foreign Missions Act, §§ 201 et seq., 201(a), 202, 202(a)(2), 203, 206, 206(d, i), as amended, 22 U.S.C. §§ 4301 et seq., 4301(a), 4302, 4302(a)(2), 4303, 4306, 4306(d, i). Embassy of People's Republic of Benin v. District of Columbia Bd. of Zoning Adjustment, 534 A.2d 310, 1987 D.C. App. LEXIS 507 (1987).

Foreign Missions Act does not create two independent and parallel schemes, one federal and one local, for resolution of chancery issues. Foreign Missions Act, §§ 201(a), 206, 206(a, d), 207, as amended, 22 U.S.C. §§ 4301(a), 4306, 4306(a, d), 4307. Embassy of People's Republic of Benin v. District of Columbia Bd. of Zoning Adjustment, 534 A.2d 310, 1987 D.C. App. LEXIS 507 (1987).

Question whether chancery construction of radio tower and antenna in District of Columbia was expansion of chancery subject to section of Foreign Missions Act involved exercise of judgment best made by Foreign Missions Act board of zoning adjustment, rather than District of Columbia board. Foreign Missions Act, §§ 206, 206(a, i), as amended, 22 U.S.C. §§ 4306, 4306(a, i). Embassy of People's Republic of Benin v. District of Columbia Bd. of Zoning Adjustment, 534 A.2d 310, 1987 D.C. App. LEXIS 507 (1987).

Foreign Missions Act provided exclusive procedure available for consideration of foreign embassy's application to construct 38-foot antenna tower at site of chancery in District of Columbia for operation of diplomatic radio station, and, thus, board of zoning adjustment was without jurisdiction to review application solely under District of Columbia law. D.C. Code 1981, § 5-424; D.C. Code 1987 Supp., §§ 5-1201 et seq., 5-1201(a), 5-1202(a)(2), 5-1206, 5-1206(i); Foreign Missions Act, §§ 201 et seq., 201(a), 202, 202(a)(2), 203, 206, 206(d, i), as amended, 22 U.S.C. §§ 4301 et seq., 4301(a), 4302, 4302(a)(2), 4303, 4306, 4306(d, i). Embassy of People's Republic of Benin v. District of Columbia Bd. of Zoning Adjustment, 534 A.2d 310, 1987 D.C. App. LEXIS 507 (1987).

Language in Taiwan Relations Act, providing that United States laws would apply to Taiwan in same manner that they applied when two countries enjoyed full diplomatic relations, also governed instrumentalities of Taiwan; accordingly, instrumentality of Taiwan was not free to elect whether its variance application would be treated as one for "chancery" use. Taiwan Relations Act, § 4(a), 22 U.S.C. § 3303(a); Foreign Missions Act, § 202(a)(2), as amended, 22 U.S.C. § 4302(a)(2); D.C. Code 1981, § 5-1201 et seq. Dupont Circle Citizens Asso. v. District of Columbia Bd. of Zoning Adjustment, 530 A.2d 1163, 1987 D.C. App. LEXIS 435 (1987).

Determination of Secretary of State, that instrumentality established by People of Taiwan to represent Taiwan in this country would not occupy premises as "chancery" for purpose of zoning variance application, was not abuse of discretion, given lack of diplomatic relations

between United States and Taiwan. Foreign Missions Act, § 202(a)(2), as amended, 22 U.S.C. § 4302(a)(2); D.C. Code 1981, § 5-1201 et seq. Dupont Circle Citizens Asso. v. District of Columbia Bd. of Zoning Adjustment, 530 A.2d 1163, 1987 D.C. App. LEXIS 435 (1987).

Foreign mission.

Zoning Commission did not lack jurisdiction over International Monetary Fund's application for modification of planned unit development (PUD) on basis of Foreign Missions Act; record was uncontradicted that Secretary of State had not exercised his discretion to treat international organizations as "foreign missions." State Department Basic Authorities Act of 1956, § 209(b), as amended, 22 U.S.C. § 4309(b); D.C. Code 1981, § 5-1209. Foggy Bottom Ass'n v. District of Columbia Zoning Comm'n, 639 A.2d 578, 1994 D.C. App. LEXIS 46 (1994).

§ 6-1303. Office of Foreign Missions.

(a) The Secretary shall establish an Office of Foreign Missions as an office within the Department of State. The Office shall be headed by a Director, appointed by the President by and with the advice and consent of the Senate, who shall perform his or her functions under the supervision and direction of the Secretary. The Secretary may delegate this authority for supervision and direction of the Director only to the Deputy Secretary of State or an Under Secretary of State. The Director shall have the rank of ambassador. The Director shall be an individual who is a member of the Foreign Service, who has been a member of the Foreign Service for at least 10 years, who has significant administrative experience, and who has served in countries in which the United States has had significant problems in assuring the secure and efficient operations of its missions as the result of the actions of other countries.

(b) There shall also be a Deputy Director of the Office of Foreign Missions who shall be an individual who has served in the United States intelligence community.

(c) The Secretary may authorize the Director to:

(1) Assist agencies of federal, state, and municipal government with regard to ascertaining and according benefits, privileges, and immunities to which a foreign mission may be entitled;

(2) Provide or assist in the provision of benefits for or on behalf of a foreign mission in accordance with § 6-1304; and

(3) Perform such other functions as the Secretary may determine necessary in furtherance of the policy of this chapter.

(Aug. 24, 1982, 96 Stat. 284, Pub. L. 97-241, § 202(b); Nov. 22, 1983, 97 Stat. 1017, Pub. L. 98-164, § 604(a), (b).)

Section references. — This section is referred to in §§ 6-1302 and 6-1307.

Prior Codifications. — 1981 Ed., § 5-1203.
Effective date. — For effective date of

amendment made by title II of Pub. L. 97-241, Historical and Statutory Notes following § 6-1301.

§ 6-1304. Provision of benefits.

(a) Upon the request of a foreign mission, benefits may be provided to or for that foreign mission by or through the Director on such terms and conditions as the Secretary may approve.

(b) If the Secretary determines that such action is reasonably necessary on the basis of reciprocity or otherwise:

- (1) To facilitate relations between the United States and a sending state;
- (2) To protect the interests of the United States;

(3) To adjust for costs and procedures of obtaining benefits for missions of the United States abroad; or

(4) To assist in resolving a dispute affecting United States interests and involving a foreign mission or sending state, then the Secretary may require a foreign mission: (A) to obtain benefits from or through the Director on such terms and conditions as the Secretary may approve; or (B) to forego the acceptance, use, or relation of any benefit or to comply with such terms and conditions as the Secretary may determine as a condition to the execution or performance in the United States of any contract or other agreement, the acquisition, retention, or use of any real property, or the application for or acceptance of any benefit (including any benefit from or authorized by any federal, state, or municipal governmental authority, or any entity providing public services).

(c) Terms and conditions established by the Secretary under this section may include:

- (1) A requirement to pay to the Director a surcharge or fee; and

(2) A waiver by a foreign mission (or any assignee of or person deriving rights from a foreign mission) of any recourse against any governmental authority, any entity providing public services, any employee or agent of such an authority or entity, or any other person, in connection with any action determined by the Secretary to be undertaken in furtherance of this chapter.

(d) For purposes of effectuating a waiver of recourse which is required under this section, the Secretary may designate the Director or any other officer of the Department of State as the agent of a foreign mission (or of any assignee of or person deriving rights from a foreign mission). Any such waiver by an officer so designated shall for all purposes (including any court or administrative proceeding) be deemed to be a waiver by the foreign mission (or the assignee of or other person deriving rights from a foreign mission).

(e) Nothing in this chapter shall be deemed to preclude or limit in any way the authority of the United States Secret Service to provide protective services pursuant to § 3056 or § 3056A of Title 18, United States Code, at a level commensurate with protective requirements as determined by the United States Secret Service.

(Aug. 24, 1982, 96 Stat. 284, Pub. L. 97-241, § 204; Aug. 16, 1985, 99 Stat. 405, Pub. L. 99-93, §§ 126(b), 127(c); Mar. 9, 2006, 120 Stat. 255, Pub. L. 109-177, § 605(d)(2).)

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Section references. — This section is referred to in §§ 6-1303, 6-1307, and 6-1309.

Prior Codifications. — 1981 Ed., § 5-1204.

Effect of amendments. — Pub. L. 109-177, in subsec. (e), substituted “§ 3056 or § 3056A” for “§ 202 of Title 3, United States Code or § 3056”.

Effective date. — For effective date of amendment made by title II of Pub. L. 97-241, Historical and Statutory Notes following § 6-1301.

Section 126(e) of Pub. L. 99-93 provided that the amendments made by the section shall take effect on October 1, 1985.

§ 6-1304.01. Notice of lapse of termination of liability insurance; report of motor vehicles, vessels, and aircraft owned by members of mission; fee for unsatisfied judgments or damages.

(a)(1) The head of a foreign mission shall notify promptly the Director of the lapse or termination of any liability insurance coverage held by a member of the mission, by a member of the family of such member, or by an individual described in § 19 of the Convention on Privileges and Immunities of the United Nations of February 13, 1946.

(2) Not later than February 1 of each year, the head of each foreign mission shall prepare and transmit to the Director a report including a list of motor vehicles, vessels, and aircraft registered in the United States by members of the mission, members of the families of such members, individuals described in § 19 of the Convention on Privileges and Immunities of the United Nations of February 13, 1946, and by the mission itself. Such list shall set forth for each such motor vehicle, vessel, or aircraft:

(A) The jurisdiction in which it is registered;

(B) The name of the insured;

(C) The name of the insurance company;

(D) The insurance policy number and the extent of insurance coverage;

and

(E) Such other information as the Director may prescribe.

(b) Whenever the Director finds that a member of a foreign mission, a member of the family of such member, or an individual described in § 19 of the Convention on Privileges and Immunities of the United Nations of February 13, 1946: (1) is at fault for personal injury, death, or property damage arising out of the operation of a motor vehicle, vessel, or aircraft in the United States; (2) is not covered by liability insurance; and (3) has not satisfied a court-rendered judgment against him or is not legally liable, the Director shall impose a surcharge or fee on the foreign mission of which such member or individual is a part, amounting to the unsatisfied portion of the judgment rendered against such member or individual or, if there is no court-rendered judgment, an estimated amount of damages incurred by the victim. The payment of any such surcharge or fee shall be available only for compensation of the victim or his estate.

(c) For purposes of this section:

(1) The term “head of a foreign mission” has the same meaning as is ascribed to the term “head of a mission” in Article 1 of the Vienna Convention on Diplomatic Relations of April 18, 1961 (T.I.A.S. numbered 7502; 23 U.S.T. 3227); and

(2) The terms “members of a mission” and “family” have the same meaning as is ascribed to them by paragraphs (1) and (2) of § 2 of the Diplomatic Relations Act (22 U.S.C. § 254a).

(Aug. 24, 1982, Pub. L. 97-241, § 204A, as added Nov. 22, 1983, 97 Stat. 1017, Pub. L. 98-164, § 204A.)

Prior Codifications. — 1981 Ed., § 5-1204.1. amendment made by title II of Pub. L. 97-241, Historical and Statutory Notes following § 6-1301.

Effective date. — For effective date of

§ 6-1305. Property.

(a)(1) The Secretary shall require any foreign mission, including any mission to an international organization (as defined in § 6-1309(b)(2)), to notify the Director prior to any proposed acquisition, or any proposed sale or other disposition, of any real property by or on behalf of such mission. The foreign mission (or other party acting on behalf of the foreign mission) may initiate or execute any contract, proceeding, application, or other action required for the proposed action:

(A) Only after the expiration of the 60-day period beginning on the date of such notification (or after the expiration of such shorter period as the Secretary may specify in a given case); and

(B) Only if the mission is not notified by the Secretary within that period that the proposal has been disapproved; however, the Secretary may include in such a notification such terms and conditions as the Secretary may determine appropriate in order to remove the disapproval.

(2) For purposes of this section, “acquisition” includes any acquisition or alteration of, or addition to, any real property or any change in the purpose for which real property is used by a foreign mission.

(b) The Secretary may require any foreign mission to divest itself of, or forego the use of, any real property determined by the Secretary:

(1) Not to have been acquired in accordance with this section;

(2) To exceed limitations placed on real property available to a United States mission in the sending state; or

(3) Where otherwise necessary to protect the interests of the United States.

(c) If a foreign mission has ceased conducting diplomatic, consular, and other governmental activities in the United States and has not designated a protecting power or other agent approved by the Secretary to be responsible for the property of that foreign mission, the Secretary:

(1) Until the designation of a protecting power or other agent approved by the Secretary, may protect and preserve any property of that foreign mission; and

(2) May authorize the Director to dispose of such property at such time as the Secretary may determine after the expiration of the 1-year period beginning on the date that the foreign mission ceased those activities, and may remit to the sending state the net proceeds from such disposition.

(Aug. 24, 1982, 96 Stat. 285, Pub. L. 97-241, § 205; Aug. 16, 1985, 99 Stat. 405, Pub. L. 99-93, § 127(d), (e).)

Section references. — This section is referred to in §§ 6-1306 and 6-1307.

Prior Codifications. — 1981 Ed., § 5-1205.

Effective date. — For effective date of

amendment made by title II of Pub. L. 97-241, Historical and Statutory Notes following § 6-1301.

§ 6-1306. Location in District.

(a) The location, replacement, or expansion of chanceries in the District of Columbia shall be subject to this section.

(b)(1) A chancery shall be permitted to locate as a matter of right in any area which is zoned commercial, industrial, waterfront, or mixed-use (CR).

(2) A chancery shall also be permitted to locate: (A) in any area which is zoned medium-high or high density residential; and (B) in any other area, determined on the basis of existing uses, which includes office or institutional uses, including, but not limited to, any area zoned mixed-use diplomatic or special purpose; subject to disapproval by the District of Columbia Board of Zoning Adjustment in accordance with this section.

(3) In each of the areas described in paragraphs (1) and (2) of this subsection, the limitations and conditions applicable to chanceries shall not exceed those applicable to other office or institutional uses in that area.

(c)(1) If a foreign mission wishes to locate a chancery in an area described in subsection (b)(2) of this section, or wishes to appeal an administrative decision relating to a chancery based in whole or in part upon any zoning map or regulation, it shall file an application with the Board of Zoning Adjustment which shall publish notice of that application in the District of Columbia Register.

(2) Regulations issued to carry out this section shall provide appropriate opportunities for participation by the public in proceedings concerning the location, replacement, or expansion of chanceries.

(3) A final determination concerning the location, replacement, or expansion of a chancery shall be made not later than 6 months after the date of the filing of an application with respect to such location, replacement, or expansion. Such determination shall not be subject to the administrative proceedings of any other agency or official except as provided in this chapter.

(d) Any determination concerning the location of a chancery under subsection (b)(2) of this section, or concerning an appeal of an administrative decision with respect to a chancery based in whole or in part upon any zoning regulation or map, shall be based solely on the following criteria:

(1) The international obligation of the United States to facilitate the provision of adequate and secure facilities for foreign missions in the Nation's Capital;

(2) Historic preservation, as determined by the Board of Zoning Adjustment in carrying out this section; and in order to ensure compatibility with historic landmarks and districts, substantial compliance with District of Columbia and federal regulations governing historic preservation shall be

required with respect to new construction and to demolition of or alteration to historic landmarks;

(3) The adequacy of off-street or other parking and the extent to which the area will be served by public transportation to reduce parking requirements, subject to such special security requirements as may be determined by the Secretary, after consultation with federal agencies authorized to perform protective services;

(4) The extent to which the area is capable of being adequately protected, as determined by the Secretary, after consultation with federal agencies authorized to perform protective services;

(5) The municipal interest, as determined by the Mayor of the District of Columbia; and

(6) The federal interest, as determined by the Secretary.

(e)(1) Regulations, proceedings, and other actions of the National Capital Planning Commission, the Zoning Commission for the District of Columbia, and the Board of Zoning Adjustment affecting the location, replacement, or expansion of chanceries shall be consistent with this section (including the criteria set out in subsection (d) of this section) and shall reflect the policy of this chapter.

(2) Proposed actions of the Zoning Commission concerning implementation of this section shall be referred to the National Capital Planning Commission for review and comment.

(f) Regulations issued to carry out this section shall provide for proceedings of a rule-making and not of an adjudicatory nature.

(g) The Secretary shall require foreign missions to comply substantially with District of Columbia building and related codes in a manner determined by the Secretary to be not inconsistent with the international obligations of the United States.

(h) Approval by the Board of Zoning Adjustment or the Zoning Commission or, except as provided in § 6-1305, by any other agency or official is not required:

(1) For the location, replacement, or expansion of a chancery to the extent that authority to proceed, or rights or interests, with respect to such location, replacement, or expansion were granted to or otherwise acquired by the foreign mission before October 1, 1982; or

(2) For continuing use of a chancery by a foreign mission to the extent that the chancery was being used by a foreign mission on October 1, 1982.

(i)(1) The President may designate the Secretary of Defense, the Secretary of the Interior, or the Administrator of General Services (or such alternate as such official may from time to time designate) to serve as a member of the Zoning Commission in lieu of the Director of the National Park Service whenever the President determines that the Zoning Commission is performing functions concerning the implementation of this section.

(2) Whenever the Board of Zoning Adjustment is performing functions regarding an application by a foreign mission with respect to the location, expansion, or replacement of a chancery:

(A) The representative from the Zoning Commission shall be the

Director of the National Park Service or if another person has been designated under paragraph (1) of this subsection, the person so designated; and

(B) The representative from the National Capital Planning Commission shall be the Executive Director of that Commission.

(j) Provisions of law (other than this chapter) applicable with respect to the location, replacement, or expansion of real property in the District of Columbia shall apply with respect to chanceries only to the extent that they are consistent with this section.

(Aug. 24, 1982, 96 Stat. 286, Pub. L. 97-241, § 206.)

Cross references. — Application of construction code, see § 6-1403.

Section references. — This section is referred to in § 6-1309.

Prior Codifications. — 1981 Ed., § 5-1206.

Effective date. — For effective date of

amendment made by title II of Pub. L. 97-241, Historical and Statutory Notes following § 6-1301.

Delegation of Authority. — Delegation of authority under Law 97-241, see Mayor's Order 83-106, April 28, 1983.

CASE NOTES

ANALYSIS

In general.

Judicial review.

Zoning regulation.

In general.

Foreign Missions Act applied to foreign embassy's application for special exception to construct 38-foot antenna tower at site of chancery in District of Columbia for operation of diplomatic radio station. D.C. Code 1981, § 5-424; D.C. Code 1987 Supp., §§ 5-1201 et seq., 5-1201(a), 5-1202(a)(2), 5-1206, 5-1206(i); Foreign Missions Act, §§ 201 et seq., 201(a), 202, 202(a)(2), 203, 206, 206(d, i), as amended, 22 U.S.C. §§ 4301 et seq., 4301(a), 4302, 4302(a)(2), 4303, 4306, 4306(d, i). Embassy of People's Republic of Benin v. District of Columbia Bd. of Zoning Adjustment, 534 A.2d 310, 1987 D.C. App. LEXIS 507 (1987).

Language in Taiwan Relations Act, providing that United States laws would apply to Taiwan in same manner that they applied when two countries enjoyed full diplomatic relations, also governed instrumentalities of Taiwan; accordingly, instrumentality of Taiwan was not free to elect whether its variance application would be treated as one for "chancery" use. Taiwan Relations Act, § 4(a), 22 U.S.C. § 3303(a); Foreign Missions Act, § 202(a)(2), as amended, 22 U.S.C. § 4302(a)(2); D.C. Code 1981, § 5-1201 et seq. Dupont Circle Citizens Asso. v. District of Columbia Bd. of Zoning Adjustment, 530 A.2d 1163, 1987 D.C. App. LEXIS 435 (1987).

Determination of Secretary of State, that instrumentality established by People of Taiwan to represent Taiwan in this country would not occupy premises as "chancery" for purpose of zoning variance application, was not abuse of

discretion, given lack of diplomatic relations between United States and Taiwan. Foreign Missions Act, § 202(a)(2), as amended, 22 U.S.C. § 4302(a)(2); D.C. Code 1981, § 5-1201 et seq. Dupont Circle Citizens Asso. v. District of Columbia Bd. of Zoning Adjustment, 530 A.2d 1163, 1987 D.C. App. LEXIS 435 (1987).

Judicial review.

Decision by Foreign Missions Board of Zoning Adjustment (FM-BZA) was not rendered after contested case, and thus Court of Appeals lacked jurisdiction to review it. D.C. Code 1981, § 11-722. United States v. District of Columbia Bd. of Zoning Adjustment, 644 A.2d 995, 1994 D.C. App. LEXIS 50 (1994).

Zoning regulation.

When dealing with proposed, or nonfinal decision, Zoning Commission may reopen record and hear further evidence. D.C. Code 1981, § 5-1206(b)(2). Daro Realty, Inc. v. District of Columbia Zoning Com., 581 A.2d 295, 1990 D.C. App. LEXIS 251 (1990).

Zoning Commission properly exercised power specifically granted to it by statute to reopen record prior to final decision upon request of property owner and calling for comments on property owner's new proposal where Commission provided notice to all interested parties. D.C. Code 1981, § 5-1206(b)(2). Daro Realty, Inc. v. District of Columbia Zoning Com., 581 A.2d 295, 1990 D.C. App. LEXIS 251 (1990).

Foreign Missions Act provided exclusive procedure available for consideration of foreign embassy's application to construct 38-foot antenna tower at site of chancery in District of Columbia for operation of diplomatic radio station, and, thus, board of zoning adjustment was without jurisdiction to review application solely

under District of Columbia law. D.C. Code 1981, § 5-424; D.C. Code 1987 Supp., §§ 5-1201 et seq., 5-1201(a), 5-1202(a)(2), 5-1206, 5-1206(i); Foreign Missions Act, §§ 201 et seq., 201(a), 202, 202(a)(2), 203, 206, 206(d, i), as

amended, 22 U.S.C. §§ 4301 et seq., 4301(a), 4302, 4302(a)(2), 4303, 4306, 4306(d, i). *Embassy of People's Republic of Benin v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 310, 1987 D.C. App. LEXIS 507 (1987).

§ 6-1307. Preemption.

Notwithstanding any other law, no act of any federal agency shall be effective to confer or deny any benefit with respect to any foreign mission contrary to this chapter. Nothing in § 6-1302, § 6-1303, § 6-1304, or § 6-1305 may be construed to preempt any state or municipal law or governmental authority regarding zoning, land use, health, safety, or welfare, except that a denial by the Secretary involving a benefit for a foreign mission within the jurisdiction of a particular state or local government shall be controlling.

(Aug. 24, 1982, 96 Stat. 288, Pub. L. 97-241, § 207.)

Prior Codifications. — 1981 Ed., § 5-1207.

Effective date. — For effective date of amendment made by title II of Pub. L. 97-241,

Historical and Statutory Notes following § 6-1301.

CASE NOTES

Zoning.

Foreign Missions Act provided exclusive procedure available for consideration of foreign embassy's application to construct 38-foot antenna tower at site of chancery in District of Columbia for operation of diplomatic radio station, and, thus, board of zoning adjustment was without jurisdiction to review application solely under District of Columbia law. D.C. Code

1981, § 5-424; D.C. Code 1987 Supp., §§ 5-1201 et seq., 5-1201(a), 5-1202(a)(2), 5-1206, 5-1206(i); Foreign Missions Act, §§ 201 et seq., 201(a), 202, 202(a)(2), 203, 206, 206(d, i), as amended, 22 U.S.C. §§ 4301 et seq., 4301(a), 4302, 4302(a)(2), 4303, 4306, 4306(d, i). *Embassy of People's Republic of Benin v. District of Columbia Bd. of Zoning Adjustment*, 534 A.2d 310, 1987 D.C. App. LEXIS 507 (1987).

§ 6-1308. Administrative provisions.

(a) The Secretary may issue such regulations as the Secretary may determine necessary to carry out the policy of this chapter.

(b) Compliance with any regulation, instruction, or direction issued by the Secretary under this chapter shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court or administrative proceeding for, or with respect to, anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, this chapter, or any regulation, instruction, or direction issued by the Secretary under this chapter.

(c) For purposes of administering this chapter:

(1) The Secretary may accept details and assignments of employees of federal agencies to the Office of Foreign Missions on a reimbursable or nonreimbursable basis (with any such reimbursements to be credited to the appropriations made available for the salaries and expenses of officers and employees of the employing agency); and

(2) The Secretary may, to the extent necessary to obtain services without delay, exercise his authority to employ experts and consultants under § 3109

of Title 5, United States Code, without requiring compliance with such otherwise applicable requirements for that employment as the Secretary may determine, except that such employment shall be terminated after 60 days if by that time those requirements are not complied with.

(d) Contracts and subcontracts for supplies or services, including personal services, made by or on behalf of the Director shall be made after advertising, in such manner and at such times as the Secretary shall determine to be adequate to ensure notice and opportunity for competition, except that advertisement shall not be required when: (1) the Secretary determines that it is impracticable or will not permit timely performance to obtain bids by advertising; or (2) the aggregate amount involved in a purchase of supplies or procurement of services does not exceed \$10,000. Such contracts and subcontracts may be entered into without regard to laws and regulations otherwise applicable to solicitation, negotiation, administration, and performance of government contracts. In awarding contracts, the Secretary may consider such factors as relative quality and availability of supplies or services and the compatibility of the supplies or services with implementation of this chapter.

(e) The head of any federal agency may, for purposes of this chapter:

(1) Transfer or loan any property to, and perform administrative and technical support functions and services for the operations of, the Office of Foreign Missions (with reimbursements to agencies under this paragraph to be credited to the current applicable appropriation of the agency concerned); and

(2) Acquire and accept services from the Office of Foreign Missions, including (whenever the Secretary determines it to be in furtherance of the purposes of this chapter) acquisitions without regard to laws normally applicable to the acquisition of services by such agency.

(f) Assets of or under the control of the Office of Foreign Missions, wherever situated, which are used by or held for the use of a foreign mission shall not be subject to attachment, execution, injunction, or similar process, whether intermediate or final.

(g) Except as otherwise provided, any determination required under this chapter shall be committed to the discretion of the Secretary.

(h)(1) In order to implement this chapter, the Secretary may transfer to the working capital fund established by § 13 of this act such amounts available to the Department of State as may be necessary.

(2) All revenues, including proceeds from gifts and donations, received by the Director or the Secretary in carrying out this chapter may be credited to the working capital fund established by § 13 of this act and shall be available for purposes of this chapter in accordance with that section.

(3) Only amounts transferred or credited to the working capital fund established by § 13 of this act may be used in carrying out the functions of the Secretary or the Director under this chapter.

(Aug. 24, 1982, 96 Stat. 288, Pub. L. 97-241, § 208.)

Section references. — This section is referred to in § 6-1313.

Prior Codifications. — 1981 Ed., § 5-1208.

Effective date. — For effective date of

amendment made by title II of Pub. L. 97-241, Historical and Statutory Notes following § 6-1301.

References in text. — “§ 13 of this act,”

referred to throughout subsection (h) of this section, is § 13 of the Act of August 24, 1982, 96 Stat. 288, Pub. L. 97-241.

§ 6-1309. Application to international organizations.

(a) The Secretary may make § 6-1306, or any other provision of this chapter, applicable with respect to an international organization to the same extent that it is applicable with respect to a foreign mission if the Secretary determines that such application is necessary to carry out the policy set forth in § 6-1301(b) and to further the objectives set forth in § 6-1304(b).

(b) For purposes of this section, “international organization” means:

(1) a public international organization designated as such pursuant to the International Organizations Immunities Act (22 U.S.C. §§ 288 — 288f-4) or a public international organization created pursuant to a treaty or other international agreement as an instrument through or by which 2 or more foreign governments engage in some aspect of their conduct of international affairs; and

(2) an official mission (other than a United States mission) to such a public international organization; including any real property of such an organization or mission and including the personnel of such an organization or mission.

(Aug. 24, 1982, 96 Stat. 289, Pub. L. 97-241, § 209.)

Section references. — This section is referred to in §§ 6-1302, 6-1305, 6-1314, and 6-1315.

Prior Codifications. — 1981 Ed., § 5-1209.

Effective date. — For effective date of amendment made by title II of Pub. L. 97-241, Historical and Statutory Notes following § 6-1301.

References in text. — The “International Organizations Immunities Act,” referred to in (b), is the Act of Dec. 29, 1945, C. 652, 59 Stat. 669, as amended, and is codified as 22 U.S.C. §§ 288—288f-4.

CASE NOTES

In general.

Zoning Commission did not lack jurisdiction over International Monetary Fund’s application for modification of planned unit development (PUD) on basis of Foreign Missions Act; record was uncontradicted that Secretary of State had not exercised his discretion to treat

international organizations as “foreign missions.” State Department Basic Authorities Act of 1956, § 209(b), as amended, 22 U.S.C. § 4309(b); D.C. Code 1981, § 5-1209. *Foggy Bottom Ass’n v. District of Columbia Zoning Comm’n*, 639 A.2d 578, 1994 D.C. App. LEXIS 46 (1994).

§ 6-1309.01. United States responsibilities for employees of the United Nations.

(a) *Findings.* — The Congress finds that:

(1) Pursuant to the Agreement Between the United States and the United Nations Regarding the Headquarters of the United Nations (authorized by Public Law 80-357 (22 U.S.C. § 287 note)), the United States has accepted:

(A) The obligation to permit and to facilitate the right of individuals, who are employed by or are authorized by the United Nations to conduct

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official business in connection with that organization or its agencies, to enter into and exit from the United States for purposes of conducting official activities within the United Nations Headquarters District, subject to regulation as to points of entry and departure; and

(B) The implied obligation to permit and to facilitate the acquisition of facilities in order to conduct such activities within or in proximity to the United Nations Headquarters District, subject to reasonable regulation including regulation of the location and size of such facilities; and

(2) Taking into account paragraph (1) of this subsection and consistent with the obligation of the United States to facilitate the functioning of the United Nations, the United States has no additional obligation to permit the conduct of any other activities, including nonofficial activities, by such individuals outside of the United Nations Headquarters District.

(b) *Activities of United Nations employees.* — (1) The conduct of any activities, or the acquisition of any benefits (as defined in § 6-1302(a)(1)), outside the United Nations Headquarters District by any individual employed by, or authorized by the United Nations to conduct official business in connection with, that organization or its agencies, or by any person or agency acting on behalf thereof, may be permitted or denied or subject to reasonable regulation, as determined to be in the best interests of the United States and pursuant to this title.

(2) The Secretary shall apply to those employees of the United Nations Secretariat who are nationals of a foreign country or members of a foreign mission all terms, limitations, restrictions, and conditions which are applicable pursuant to this title to the members of that country's mission or of any other mission to the United Nations unless the Secretary determines and reports to the Congress that national security and foreign policy circumstances require that this paragraph be waived in specific circumstances.

(c) *Reports.* — The Secretary shall report to the Congress:

(1) Not later than 30 days after August 16, 1985, on the plans of the Secretary for implementing this section; and

(2) Not later than 6 months thereafter, on the actions taken pursuant to those plans.

(d) *United States nationals.* — This section shall not apply with respect to any United States national.

(e) *Definitions.* — For purposes of this section, the term "United Nations Headquarters District" means the area within the United States which is agreed to by the United Nations and the United States to constitute such a district, together with such other areas as the Secretary of State may approve from time to time in order to permit effective functioning of the United Nations or missions to the United Nations.

(Aug. 24, 1982, Pub. L. 97-241, § 209A, as added Aug. 16, 1985, 99 Stat. 405, Pub. L. 99-93, § 141.)

Prior Codifications. — 1981 Ed., § 5-1209.1. amendment made by title II of Pub. L. 97-241, Historical and Statutory Notes following § 6-

Effective date. — For effective date of 1301.

References in text. — “This title,” referred to subsection (b)(1) and (2), is the Act of August 24, 1982, Pub. L. 97-241, § 209A.

§ 6-1310. Privileges and immunities.

Nothing in this chapter shall be construed to limit the authority of the United States to carry out its international obligations, or to supersede or limit immunities otherwise available by law. No act or omission by any foreign mission, public international organization, or official mission to such an organization, in compliance with this chapter shall be deemed to be an implied waiver of any immunity otherwise provided for by law.

(Aug. 24, 1982, 96 Stat. 290, Pub. L. 97-241, § 210.)

Prior Codifications. — 1981 Ed., § 5-1210. Historical and Statutory Notes following § 6-1301.
Effective date. — For effective date of amendment made by title II of Pub. L. 97-241,

§ 6-1311. Enforcement.

(a) It shall be unlawful for any person to make available any benefits to a foreign mission contrary to this chapter. The United States, acting on its own behalf or on behalf of a foreign mission, has standing to bring or intervene in an action to obtain compliance with this chapter, including any action for injunctive or other equitable relief.

(b) Upon the request of any federal agency, any state or local government agency, or any business or other person that proposes to enter into a contract or other transaction with a foreign mission, the Secretary shall advise whether the proposed transaction is prohibited by any regulation or determination of the Secretary under this chapter.

(Aug. 24, 1982, 96 Stat. 290, Pub. L. 97-241, § 211.)

Prior Codifications. — 1981 Ed., § 5-1211. Historical and Statutory Notes following § 6-1301.
Effective date. — For effective date of amendment made by title II of Pub. L. 97-241,

§ 6-1312. Presidential approved procedures and guidelines.

The authorities granted to the Secretary pursuant to the provisions of this chapter shall be exercised in accordance with procedures and guidelines approved by the President.

(Aug. 24, 1982, 96 Stat. 290, Pub. L. 97-241, § 212.)

Prior Codifications. — 1981 Ed., § 5-1212. Historical and Statutory Notes following § 6-1301.
Effective date. — For effective date of amendment made by title II of Pub. L. 97-241,

§ 6-1313. Extraordinary protective services.

(a) *General authority.* — The Secretary may provide extraordinary protective services for foreign missions directly, by contract, or through state or local authority to the extent deemed necessary by the Secretary in carrying out this chapter, except that the Secretary may not provide under this section any protective services for which authority exists to provide such services under § 3056A(a)(7) and (d) of Title 18, United States Code.

(b) *Requirement of extraordinary circumstances.* — The Secretary may provide funds to a state or local authority for protective services under this section only if the Secretary has determined that a threat of violence, or other circumstances, exists which requires extraordinary security measures which exceed those which local law enforcement agencies can reasonably be expected to take.

(c) *Consultation with Congress before obligation of funds.* — Funds may be obligated under this section only after regulations to implement this section have been issued by the Secretary after consultation with appropriate committees of the Congress.

(d) *Restrictions on use of funds.* — Of the funds made available for obligation under this section in any fiscal year:

(1) Not more than 20% may be obligated for protective services within any single state during that year; and

(2) Not less than 15% shall be retained as a reserve for protective services provided directly by the Secretary or for expenditures in local jurisdictions not otherwise covered by an agreement for protective services under this section. The limitations on funds available for obligation in this subsection shall not apply to unobligated funds during the final quarter of any fiscal year.

(e) *Period of agreement with state or local authority.* — Any agreement with a state or local authority for the provision of protective services under this section shall be for a period of not to exceed 90 days in any calendar year, but such agreements may be renewed after review by the Secretary.

(f) *Requirement for appropriations.* — Contracts may be entered into in carrying out this section only to such extent or in such amounts as are provided in advance in appropriation acts.

(g) *Working capital fund.* — Amounts used to carry out this section shall not be subject to § 6-1308(h).

(Aug. 24, 1982, Pub. L. 97-241, § 214, as added Aug. 16, 1985, 99 Stat. 405, Pub. L. 99-93, § 126(a); Mar. 9, 2006, 120 Stat. 255, Pub. L. 109-177, § 605(d)(3).)

Prior Codifications. — 1981 Ed., § 5-1213.
Effect of amendments. — Pub. L. 109-177, in subsec. (a), substituted “§ 3056A(a)(7) and (d) of Title 18” for “§§ 202(8) and 208 of Title 3”.

Effective date. — Section 126(e) of Pub. L. 99-93 provided that the amendments made by the section shall take effect on October 1, 1985.

§ 6-1314. Use of foreign mission in a manner incompatible with its status as a foreign mission.

(a) *Establishment of limitation on certain uses.* — A foreign mission may not allow an unaffiliated alien the use of any premise of that foreign mission which is inviolable under United States law (including any treaty) for any purpose which is incompatible with its status as a foreign mission, including use as a residence.

(b) *Temporary lodging.* — For the purposes of this section, the term “residence” does not include such temporary lodging as may be permitted under regulations issued by the Secretary.

(c) *Waiver.* — The Secretary may waive subsection (a) of this section with respect to all foreign missions of a country (and may revoke such a waiver) 30 days after providing written notification of such a waiver, together with the reasons for such waiver (or revocation of such a waiver), to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate.

(d) *Report.* — Not later than 180 days after December 23, 1987, the Secretary of State shall submit a report to the Congress concerning the implementation of this section and shall submit such other reports to the Congress concerning changes in implementation as may be necessary.

(e) *Definitions.* — For the purposes of this section:

(1) The term “foreign mission” includes any international organization as defined in § 6-1309(b).

(2) The term “unaffiliated alien” means, with respect to a foreign country, an alien who:

(A) Is admitted to the United States as a nonimmigrant, and

(B) Is not a member, or a family member of a member, of a foreign mission of that foreign country.

(Aug. 24, 1982, Pub. L. 97-241, § 215, as added Dec. 23, 1987, 101 Stat. 1343, Pub. L. 100-204, title I, § 128(a).)

Prior Codifications. — 1981 Ed., § 5-1214.

Effective date. — Section 128(b) of Pub. L. 100-204 provided that:

“(1) Except as provided in paragraph (2), the amendment made by subsection (a) shall apply to any foreign mission beginning on the Dates of enactment of this Act.

“(2)(A) The amendment made by subsection (a) shall apply beginning 6 months after the Dates of enactment of this Act with respect to

any nonimmigrant alien who is using a foreign mission as a residence or a place of business on the Dates of enactment of this Act.

“(B) The Secretary of State may delay the effective Dates provided for in subparagraph (A) for not more than 6 months with respect to any nonimmigrant alien if the Secretary finds that a hardship to that alien would result from the implementation of subsection (A).”

§ 6-1315. Application of travel restrictions to personnel of certain countries and organizations.

(a) *Requirement for restrictions.* — The Secretary shall apply the same generally applicable restrictions to the travel while in the United States of the individuals described in subsection (b) as are applied under this title to the members of the missions of the Soviet Union in the United States.

(b) *Individuals subject to restrictions.* — The restrictions required by subsection (a) shall be applied with respect to those individuals who (as determined by the Secretary) are:

(1) The personnel of an international organization, if the individual is a national of any foreign country whose government engages in intelligence activities in the United States that are harmful to the national security of the United States;

(2) The personnel of a mission to an international organization if that mission is the mission of a foreign government that engages in intelligence activities in the United States that are harmful to the national security of the United States; or

(3) The family members or dependents of an individual described in paragraphs (1) and (2); and who are not nationals or permanent resident aliens of the United States.

(c) *Waivers.* — The Secretary, after consultation with the Director of Central Intelligence and the Director of the Federal Bureau of Investigation, may waive application of the restrictions required by subsection (a) if the Secretary determines that the national security and foreign policy interests of the United States so require.

(d) *Reports.* — The Secretary shall transmit to the Select Committee on Intelligence and the Committee on Foreign Relations of the Senate, and to the Permanent Select Committee on Intelligence and the Committee on Foreign Affairs of the House of Representatives, not later than six months after December 23, 1987, and not later than every six months thereafter, a report on the actions taken by the Secretary in carrying out this section during the previous six months.

(e) *Definitions.* — For purposes of this section:

(1) The term “generally applicable restrictions” means any limitations on the radius within which unrestricted travel is permitted and obtaining travel services through the auspices of the Office of Foreign Missions for travel elsewhere, and does not include any restrictions which unconditionally prohibit the members of missions of the Soviet Union in the United States from traveling to designated areas of the United States and which are applied as a result of particular factors in relations between the United States and the Soviet Union.

(2) The term “international organization” means an organization described in § 6-1309(b)(1).

(3) The term “personnel” includes:

(A) Officers, employees, and any other staff member, and

(B) Any individual who is retained under the contract or other arrangement to serve functions similar to those of an officer, employee, or other staff member.

(Aug. 24, 1982, Pub. L. 97-241, § 216, as added Dec. 23, 1987, 101 Stat. 1357, Pub. L. 100-204, title I, § 162(a).)

Prior Codifications. — 1981 Ed., § 5-1215.

Effective date. — Section 162(b) of Pub. L. 100-204 provided that subsection (a) shall take effect 90 days after the Dates of enactment of this Act.

References in text. — “This title”, referred to in subsection (a), is title II of the State Department Basic Authorities Act of 1956 (22 U.S.C. § 4301 et seq.).

CHAPTER 14. CONSTRUCTION CODES.

| Sec. | Sec. |
|--|--|
| 6-1401. Definitions. | 6-1406. Penalties. |
| 6-1402. Approval. | 6-1406.01. [Repealed]. |
| 6-1403. Scope. | 6-1406.02. Compliance letter fees. |
| 6-1403.01. Construction Codes database. | 6-1407. Injunctions. |
| 6-1404. Intent. | 6-1408. Documents Act. |
| 6-1405. Conflicts. | 6-1408.01. Building permit denial. |
| 6-1405.01. Administration of construction regulations. | 6-1409. Amendments; supplements; editions. |
| 6-1405.02. Expedited Construction Documents Review Program. | 6-1410. Building Rehabilitation Code. |
| 6-1405.03. Expedited construction documents review procedures. | 6-1411. Establishment of the District of Columbia Building Rehabilitation Code Advisory Council. |
| 6-1405.04. Third party inspections. | 6-1412. Construction Codes revisions for green building practices. |

§ 6-1401. Definitions.

For the purposes of this chapter, the term:

(1) "ANSI" means the American National Standards Institute, Inc., American National Standard Specifications for Making Buildings and Facilities Accessible to and Useable by Physically Handicapped People (1980).

(2) "BOCA" means the Building Officials and Code Administrators International, Inc.

(3) "Building Code" means the BOCA Basic/National Building Code/1984, 9th Edition, the 1985 Supplement to the BOCA Basic/National Building Code, and the District of Columbia Building Code Supplement of 1986 as amended by the provisions of this act [D.C. Law 6-216].

(3A) "Building Code Official" means the Director of the Department of Consumer and Regulatory Affairs.

(4) "Construction Codes" means the consolidation of Model Codes, the Building Rehabilitation Code, the D.C. Supplement, and the provisions of this act, and any future amendments, supplements, or editions authorized by § 6-1409.

(5) "Council" means the Council of the District of Columbia.

(6) "D.C. Supplement" means:

(A) The District of Columbia Building Code Supplement of 1986 submitted by the Mayor on June 30, 1986, as amended by section 11 of this act [D.C. Law 6-216];

(B) The District of Columbia Plumbing Code Supplement of 1986 submitted by the Mayor on June 30, 1986, as amended by section 11 of this act [D.C. Law 6-216];

(C) The District of Columbia Mechanical Code Supplement of 1986 submitted by the Mayor on June 30, 1986, as amended by section 11 of this act;

(D) The District of Columbia Fire Prevention Code Supplement of 1986 submitted by the Mayor on June 30, 1986, as amended by section 11 of this act [D.C. Law 6-216];

(E) The District of Columbia Existing Structures Code Supplement of 1986 submitted by the Mayor on June 30, 1986, as amended by section 11 of this act [D.C. Law 6-216];

(F) The District of Columbia One and Two Family Dwelling Code Supplement of 1986 submitted by the Mayor on June 30, 1986, as amended by section 11 of this act [D.C. Law 6-216]; and

(G) The District of Columbia Electrical Code Supplement of 1986 submitted by the Mayor on June 30, 1986, as amended by section 11 of this act [D.C. Law 6-216].

(7) "District" means the District of Columbia.

(8) "Electrical Code" means the National Fire Protection Association National Electrical Code 1984, and the District of Columbia Electrical Code Supplement of 1986 as amended by the provisions of this act [D.C. Law 6-216].

(9) "Existing Structures Code" means the BOCA Basic/National Existing Structures Code/1984, 1st Edition, and the District of Columbia Existing Structures Code Supplement of 1986 as amended by the provisions of this act [D.C. Law 6-216].

(10) "Fire Prevention Code" means the BOCA Basic/National Fire Prevention Code/1984, 6th Edition, the 1985 Supplement to the BOCA Basic/National Fire Prevention Code, and the District of Columbia Fire Prevention Code Supplement of 1986 as amended by the provisions of this act [D.C. Law 6-216].

(10A) "Fire protection systems" means devices, equipment, and systems utilized to detect a fire, activate an alarm, suppress or control a fire, or any combination thereof.

(11) "Mechanical Code" means the BOCA Basic/National Mechanical Code/1984, 5th Edition, the 1985 Supplement to the BOCA Basic/National Mechanical Code, and the District of Columbia Mechanical Code Supplement of 1986 as amended by the provisions of this act.

(12) "Model Codes" means:

- (A) The BOCA Basic/National Building Code/1984, 9th Edition;
- (B) The BOCA Basic/National Plumbing Code/1984, 6th Edition;
- (C) The BOCA Basic/National Mechanical Code/1984, 5th Edition;
- (D) The BOCA Basic/National Fire Prevention Code/1984, 6th Edition;
- (E) The BOCA Basic/National Existing Structures Code/1984, 1st Edition;

tion;

(F) The CABO One and Two Family Dwelling Code, 1983 Edition;

(G) The National Fire Protection Association National Electrical Code 1984; and

(H) The 1985 Supplement to the BOCA Basic/National Building Code, Basic/National Fire Prevention Code, Basic/National Mechanical Code, and Basic/National Plumbing Code.

(13) "One and Two Family Dwelling Code" means the CABO One and Two Family Dwelling Code, 1983 Edition, and the District of Columbia One and Two Family Dwelling Code Supplement of 1986 as amended by the provisions of this act [D.C. Law 6-216].

(14) "Plumbing Code" means the BOCA Basic/National Plumbing Code/1984, 6th Edition, the 1985 Supplement to the BOCA Basic/National Plumbing Code, and The District of Columbia Plumbing Code of 1986 as amended by the provisions of this act [D.C. Law 6-216].

(Mar. 21, 1987, D.C. Law 6-216, § 2, 34 DCR 1072; June 25, 2002, D.C. Law

14-162, §§ 201(a)(1), (2), 49 DCR 4438; Oct. 1, 2002, D.C. Law 14-190, § 302(a), 49 DCR 6968.)

Prior Codifications. — 1981 Ed., § 5-1301.

Effect of amendments. — D.C. Law 14-162 added par. (3A); and in par. (4), substituted “Model Codes, the Building Rehabilitation Code,” for “Model Codes.”

D.C. Law 14-190 added pars. (3A) and (10A).

Emergency legislation. — For temporary (90 day) amendment of section, see § 302(a) of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

Legislative history of Law 6-216. — Law 6-216, the “Construction Codes Approval and Amendments Act of 1986,” was introduced in Council and assigned Bill No. 6-500, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 18, 1986, and December 16, 1986, respectively. Signed by the Mayor on February 2, 1987, it was assigned Act No. 6-279 and transmitted to both Houses of Congress for its review.

Legislative history of Law 14-162. — Law 14-162, the “HomeStart Regulatory Improvement Amendment Act of 2002”, was introduced in Council and assigned Bill No. 14-184, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on March 5, 2002, and April 9, 2002, respectively. Signed by the Mayor on April 24, 2002, it was assigned Act No. 14-352 and transmitted to both Houses of Congress for its review. D.C. Law 14-162 became effective on June 25, 2002.

Legislative history of Law 14-190. — Law 14-190, the “Fiscal Year 2003 Budget Support

Act of 2002”, was introduced in Council and assigned Bill No. 14-609, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 7, 2002, and June 4, 2002, respectively. Signed by the Mayor on July 3, 2002, it was assigned Act No. 14-403 and transmitted to both Houses of Congress for its review. D.C. Law 14-190 became effective on October 1, 2002.

Short title. — Short title of title III of Law 14-190: Section 301 of D.C. Law 14-190 provided that title III of the act may be cited as the Construction Codes Amendment Act of 2002.

References in text. — “This act,” referred to in paragraphs (3), (4), (6)(A) through (6)(G), (8) through (11), (13), and (14), is D.C. Law 6-216.

Delegation of Authority. — Delegation of Authority Pursuant to DC Law 6-100, the “Litter Control Administration Act of 1985;” DC Law 6-42, the “Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985;” DC Law 5-165, the “DC Air Pollution Control Act of 1984;” DC Law 13-172, the “Rodent Control Act of 2000;” and DC Law 6-126, the “Construction Codes Approval and Amendments Act of 1986”, see Mayor’s Order 2002-5, February 1, 2002 (49 DCR 911).

Mayor’s Orders. — Establishment of Building Code Advisory Committee: See Mayor’s Order 89-257, November 7, 1989.

Editor’s notes. — Section 301 of D.C. Law 14-162 provided: “Pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.), the Mayor may issue rules to implement the provisions of this act.”

CASE NOTES

Liability of District.

Provision in District of Columbia demolition permit regulations requiring applicant to obtain liability insurance did not single out any particular category of persons for special protection against risks that attended demolition work such that exception-to-public-duty doctrine could be invoked by property owners to hold District liable for its alleged negligence in failing to require adjacent landowner to obtain demolition permit; property owners were merely members of general public protected by demolition permit regulations. D.C. Code 1981, § 5-1304. *District of Columbia v. Forsman*, 580 A.2d 1314, 1990 D.C. App. LEXIS 250 (1990), writ of certiorari denied by 502 U.S. 858, 112 S. Ct. 173, 116 L. Ed. 2d 136, 1991 U.S. LEXIS 5318, 60 U.S.L.W. 3262 (1991).

District of Columbia building inspector’s con-

tacts with property owners in connection with demolition work on adjacent property were not sufficient to give rise to special relationship that would allow property owners to invoke exception-to-public-duty doctrine and hold District liable for its alleged negligence in failing to require adjacent landowner to obtain demolition permit, notwithstanding that building inspector assisted property owners in getting adjacent landowner to perform certain repairs; repairs were unrelated to underpinning work that led to collapse of property owners’ house, and building inspector in fact only had two meetings with property owners prior to collapse. *District of Columbia v. Forsman*, 580 A.2d 1314, 1990 D.C. App. LEXIS 250 (1990), writ of certiorari denied by 502 U.S. 858, 112 S. Ct. 173, 116 L. Ed. 2d 136, 1991 U.S. LEXIS 5318, 60 U.S.L.W. 3262 (1991).

Building inspector's limited involvement in monitoring construction or demolition site does not place duty on District of Columbia to monitor such activities continuously thereafter. *District of Columbia v. Forsman*, 580 A.2d 1314,

1990 D.C. App. LEXIS 250 (1990), writ of certiorari denied by 502 U.S. 858, 112 S. Ct. 173, 116 L. Ed. 2d 136, 1991 U.S. LEXIS 5318, 60 U.S.L.W. 3262 (1991).

§ 6-1402. Approval.

The Council approves the Construction Codes.

(Mar. 21, 1987, D.C. Law 6-216, § 3, 34 DCR 1072.)

Prior Codifications. — 1981 Ed., § 5-1302.
Legislative history of Law 6-216. — For

legislative history of D.C. Law 6-216, see Historical and Statutory Notes following § 6-1401.

§ 6-1403. Scope.

(a) The Construction Codes shall control:

(1) Matters concerning the construction, reconstruction, alteration, addition, repair, removal, demolition, use, location, occupancy, and maintenance of all buildings, structures, signs, advertising devices, and premises in the District and applies to existing or proposed buildings and structures;

(2) The construction, prefabrication, alteration, repair, use, occupancy, and maintenance of detached 1 or 2 family dwellings not more than 3 stories in height, and their accessory structures;

(3) The design, construction, installation, maintenance, alteration, conversion, change, repair, removal, and inspection of electrical conductors, equipment, and systems in buildings or structures and on public space within the District, for the transmission, distribution, and use of electrical energy for power, heat, light, radio, television, signaling, and for other purposes;

(4) The design, installation, maintenance, alteration, and inspection of mechanical systems, including heating systems, ventilating systems, cooling systems, steam and hot water heating systems, water heaters, process piping, boilers and pressure vessels, appliances using gas, liquid, or solid fuel, chimneys and vents, mechanical refrigeration systems, fireplaces, barbecues, incinerators, crematories, and air pollution systems;

(5) The design, installation, repair, or removal of plumbing fixtures intended to receive and discharge water, liquid, or water-carried wastes into the drainage system with which they are connected; the introduction, maintenance, and extension of a supply of water through a pipe or pipes, or any appurtenance thereof, in any building, lot, premises, or establishment; connection or repair of any system of drainage whereby foul, waste, and surplus water, gas, vapor, or other fluid is discharged or proposed to be discharged through a pipe or pipes from any building, lot, premises, or establishment into any public or house sewer, drain, pit, box, filter bed, or other receptacle, or into any natural or artificial watercourse flowing through public or private property; ventilation of any building, sewer, or any fixture or appurtenance connected therewith; excavation of any public or private street, highway, road, court, alley, or space for the purpose of connecting any building, lot, premises, or establishment with any service pipe house sewer, public water main, private

water main, public sewer, private sewer, subway, conduit, or other underground structure; the performance of all classes of work usually done by plumbers and drain layers including the removal of plumbing fixtures, pipes, and fittings;

(6) Minimum requirements to safeguard life, property, or public welfare from the hazards of fire and explosion arising from the storage, handling, or use of substances, materials, and devices, and from conditions hazardous to life, property, or public welfare in the use or occupancy of buildings, structures, sheds, tents, lots, or premises;

(7) Minimum maintenance standards for all structures and premises for basic equipment and facilities for light, ventilation, space heating, and sanitation; for safety from fire; for space, use, and location; for safe and sanitary maintenance of all structures and premises now in existence; for minimum requirements for all existing buildings and structures for means of egress, fire protection systems, and other equipment and devices necessary for life safety from fire; for rehabilitation and reuse of existing structures and for allowing differences between the application of the code requirements to new construction and to alterations and repairs and for fixing the responsibilities of owners, operators, and occupants of all structures; and

(8) The design and construction of the exterior envelopes and the selection of heating, ventilating, air conditioning, service water heating, electrical distribution and illuminating systems, and equipment required for the effective use of energy.

(b) The Construction Codes shall apply to those buildings occupied by or for any foreign government as an embassy or chancery to the extent provided for in § 6-1306(g).

(c) Except for permit requirements for land disturbing activities, the Construction Codes shall not apply to public buildings or premises owned by the United States government, including appurtenant structures and portions of buildings, premises, or structures, that are under the exclusive control of an officer of the United States government in his or her official capacity. If a lessor is responsible for the maintenance and repairs to property leased to the United States government, the property shall not be deemed to be under the exclusive control of an officer of the United States government.

(d)(1) No permit required under the Construction Codes shall be issued if it is determined by the Mayor that:

(A) The permit affects an area in close proximity to the official residence of the President or the Vice President of the United States; and

(B) The United States Secret Service has established that the issuance of the permit would adversely impact the safety and security of the President or the Vice President of the United States;

(2) This subsection shall apply to each permit application that has not been granted by the Mayor by February 27, 1990.

(Mar. 21, 1987, D.C. Law 6-216, § 4, 34 DCR 1072; Jan. 30, 1990, D.C. Law 8-58, § 2, 36 DCR 7382; Feb. 27, 1990, D.C. Law 8-70, § 2, 36 DCR 7744; Feb. 5, 1994, D.C. Law 10-68, § 14, 40 DCR 6311; Aug. 26, 1994, D.C. Law 10-166, § 2, 41 DCR 4892.)

Prior Codifications. — 1981 Ed., § 5-1303.

Emergency legislation. — For temporary (90 day) amendment of section, see § 3(a) of the Sign Regulation Emergency Amendment Act of 2012 (D.C. Act 19-387, July 11, 2012, 59 DCR 8491).

Legislative history of Law 6-216. — For legislative history of D.C. Law 6-216, see Historical and Statutory Notes following § 6-1401.

Legislative history of Law 8-58. — Law 8-58, the “Construction Codes Temporary Amendment Act of 1989,” was introduced in Council and assigned Bill No. 8-344, which was retained by Council. The Bill was adopted on first and second readings on July 11, 1989 and September 26, 1989, respectively. Signed by the Mayor on October 13, 1989, it was assigned Act No. 8-88 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-68. — D.C. Law 10-68, the “Technical Amendments Act of 1993,” was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted

on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

Legislative history of Law 10-166. — Law 10-166, the “Soil Erosion and Sedimentation Control Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-536, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on June 7, 1994, and June 21, 1994, respectively. Signed by the Mayor on July 8, 1994, it was assigned Act No. 10-279 and transmitted to both Houses of Congress for its review. D.C. Law 10-166 became effective on August 26, 1994.

Mayor’s Orders. — Establishment of Building Code Advisory Committee: See Mayor’s Order 89-257, November 7, 1989.

Establishment of a Working Group to Review the District’s Existing Sign Rules and Provide Advice on Proposed Revisions, see Mayor’s Order 2011-181, October 31, 2011 (58 DCR 9416).

CASE NOTES

ANALYSIS

Actions and proceedings generally.
Instructions.
Liability of District.
Permits.
Review.

Actions and proceedings generally.

Injunction directing District of Columbia to issue building permit to developer was improper in that it gave no consideration to availability of legal remedy and would thwart legislative intent expressed in statute proscribing issuance of permits that would adversely impact safety and security of Vice President of United States; developer had adequate remedy at law if it could establish that District’s conduct amounted to uncompensated taking or that District acted unlawfully by refusing to issue building permit when ordered to do so by Board of Appeals and Review, and entry of order authorizing construction of buildings which would jeopardize safety of Vice President and his family was unnecessary and served no lawful or useful purpose. D.C. Code 1981, § 5-1303(d)(1)(B), (d)(2). *District of Columbia v. WICAL Ltd. Partnership*, 630 A.2d 174, 1993 D.C. App. LEXIS 181 (1993).

Instructions.

Because District of Columbia regulation pertaining to maximum gap allowed on either side of escalator had been repealed at time plaintiff child caught her hand in gap between transit

authority’s escalator’s steps and “skirt” (part below balustrade) on side, district court erred in instructing jury that violation of that ordinance was negligence per se; further, because jury found that authority was not negligent, and because finding of negligence per se was based solely on violation of repealed ordinance, case would be remanded with instructions to enter judgment for authority. D.C. Mun. Regs. title 13A, § 902.5 (repealed). *Weston v. Washington Metro. Area Transit Auth.*, 78 F.3d 682, 1996 U.S. App. LEXIS 4494 (C.A.D.C. 1996), amended by 86 F.3d 216, 318 U.S. App. D.C. 142 (1996).

Transit authority was not entitled to instruction that violation of District of Columbia elevator code was mere evidence of negligence, rather than negligence per se, as authority produced no justification for inability to comply with that ordinance. *Weston v. Washington Metro. Area Transit Auth.*, 78 F.3d 682, 1996 U.S. App. LEXIS 4494 (C.A.D.C. 1996), amended by 86 F.3d 216, 318 U.S. App. D.C. 142 (1996).

Liability of District.

Provision in District of Columbia demolition permit regulations requiring applicant to obtain liability insurance did not single out any particular category of persons for special protection against risks that attended demolition work such that exception-to-public-duty doctrine could be invoked by property owners to hold District liable for its alleged negligence in failing to require adjacent landowner to obtain

§ 6-1403.01 HOUSING & BUILDING RESTRICTIONS & REGULATIONS

demolition permit; property owners were merely members of general public protected by demolition permit regulations. D.C. Code 1981, § 5-1304. *District of Columbia v. Forsman*, 580 A.2d 1314, 1990 D.C. App. LEXIS 250 (1990), writ of certiorari denied by 502 U.S. 858, 112 S. Ct. 173, 116 L. Ed. 2d 136, 1991 U.S. LEXIS 5318, 60 U.S.L.W. 3262 (1991).

District of Columbia building inspector's contacts with property owners in connection with demolition work on adjacent property were not sufficient to give rise to special relationship that would allow property owners to invoke exception-to-public-duty doctrine and hold District liable for its alleged negligence in failing to require adjacent landowner to obtain demolition permit, notwithstanding that building inspector assisted property owners in getting adjacent landowner to perform certain repairs; repairs were unrelated to underpinning work that led to collapse of property owners' house, and building inspector in fact only had two meetings with property owners prior to collapse. *District of Columbia v. Forsman*, 580 A.2d 1314, 1990 D.C. App. LEXIS 250 (1990), writ of certiorari denied by 502 U.S. 858, 112 S. Ct. 173, 116 L. Ed. 2d 136, 1991 U.S. LEXIS 5318, 60 U.S.L.W. 3262 (1991).

Building inspector's limited involvement in monitoring construction or demolition site does not place duty on District of Columbia to monitor such activities continuously thereafter. *District of Columbia v. Forsman*, 580 A.2d 1314, 1990 D.C. App. LEXIS 250 (1990), writ of certiorari denied by 502 U.S. 858, 112 S. Ct. 173, 116 L. Ed. 2d 136, 1991 U.S. LEXIS 5318, 60 U.S.L.W. 3262 (1991).

Permits.

Building permit issued in violation of District code proscribing issuance of building permits

that would adversely impact safety and security of President or Vice President of United States could not be sustained on grounds that United States could condemn easement to restrict height of buildings for benefit of Vice President's adjacent resident; United States was not party to landowner's application for permit, and District's own independent interest in enforcement of its statute could not be subordinated to, or made contingent upon, any action which nonparty might take in future. D.C. Code 1981, § 5-1303(d)(1)(B), (d)(2). *District of Columbia v. WICAL Ltd. Partnership*, 630 A.2d 174, 1993 D.C. App. LEXIS 181 (1993).

Review.

Court of Appeals was authorized to determine what law was in effect at time of accident involving defendant's escalator, even though counsel by stipulation misinformed district court (contrary to defendant's legal interests) that municipal elevator code was in effect at time of accident, when it had in fact been repealed. D.C. Mun. Regs. title 13A, § 902.5 (repealed). *Weston v. Washington Metro. Area Transit Auth.*, 78 F.3d 682, 1996 U.S. App. LEXIS 4494 (C.A.D.C. 1996), amended by 86 F.3d 216, 318 U.S. App. D.C. 142 (1996).

Even though District of Columbia invited error by arguing to trial court that District code proscribing issuance of building permits that would adversely impact safety and security of President or Vice President of United States did not apply to developer's application for permit, trial court's order directing District to issue building permit could not be reconciled with plain language of statute and required reversal. D.C. Code 1981, § 5-1303(d)(1)(B), (d)(2). *District of Columbia v. WICAL Ltd. Partnership*, 630 A.2d 174, 1993 D.C. App. LEXIS 181 (1993).

§ 6-1403.01. Construction Codes database.

(a) The Mayor shall establish and maintain a searchable electronic database available through the Internet that, at a minimum, contains the Construction Codes Supplement, set forth in Title 12 of the District of Columbia Municipal Regulations, and any amendments made thereto, to the:

- (1) BOCA National Building Code/1996;
- (2) International Plumbing Code/1995;
- (3) International Mechanical Code/1996;
- (4) BOCA National Fire Prevention Code/1996;
- (5) BOCA National Property Maintenance Code/1996;
- (6) Council of American Building Officials One and Two Family Dwelling Code/1995;
- (7) National Fire Protection Association National Electrical Code/1996;
- and
- (8) Building Rehabilitation Code.

(b) The Department of Consumer and Regulatory Affairs shall make the information in the database available to any person.

(Mar. 21, 1987, D.C. Law 6-216, § 4a, as added June 25, 2002, D.C. Law 14-162, § 101, 49 DCR 4438.)

Emergency legislation. — For temporary (90 day) repeal of section, see § 3(b) of the Sign Regulation Emergency Amendment Act of 2012 (D.C. Act 19-387, July 11, 2012, 59 DCR 8491).

Legislative history of Law 14-162. — For Law 14-162, see notes following § 6-1401.

Editor's notes. — Section 301 of D.C. Law

14-162 provided: "Pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.), the Mayor may issue rules to implement the provisions of this act."

§ 6-1404. Intent.

The Construction Codes shall be construed to secure their expressed intent, which is to ensure public safety, health, and welfare by building construction, through structured strength, energy and water conservation, accessibility to persons with disabilities, adequate egress facilities, sanitary equipment, light, ventilation, and fire safety; and, in general, to secure safety to life and property from all hazards incident to the design, erection, repair, removal, demolition, or use and occupancy of buildings, structures, or premises.

(Mar. 21, 1987, D.C. Law 6-216, § 5, 34 DCR 1072; Apr. 24, 2007, D.C. Law 16-305, § 22, 53 DCR 6198.)

Prior Codifications. — 1981 Ed., § 5-1304.

Effect of amendments. — D.C. Law 16-305 substituted "persons with disabilities" for "the physically handicapped".

Legislative history of Law 6-216. — For legislative history of D.C. Law 6-216, see Historical and Statutory Notes following § 6-1401.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 6-201.

Mayor's Orders. — Establishment of Building Code Advisory Committee: See Mayor's Order 89-257, November 7, 1989.

CASE NOTES

Liability of District.

Provision in District of Columbia demolition permit regulations requiring applicant to obtain liability insurance did not single out any particular category of persons for special protection against risks that attended demolition work such that exception-to-public-duty doctrine could be invoked by property owners to hold District liable for its alleged negligence in failing to require adjacent landowner to obtain demolition permit; property owners were merely members of general public protected by demolition permit regulations. D.C. Code 1981, § 5-1304. *District of Columbia v. Forsman*, 580 A.2d 1314, 1990 D.C. App. LEXIS 250 (1990), writ of certiorari denied by 502 U.S. 858, 112 S. Ct. 173, 116 L. Ed. 2d 136, 1991 U.S. LEXIS 5318, 60 U.S.L.W. 3262 (1991).

District of Columbia building inspector's contacts with property owners in connection with demolition work on adjacent property were not

sufficient to give rise to special relationship that would allow property owners to invoke exception-to-public-duty doctrine and hold District liable for its alleged negligence in failing to require adjacent landowner to obtain demolition permit, notwithstanding that building inspector assisted property owners in getting adjacent landowner to perform certain repairs; repairs were unrelated to underpinning work that led to collapse of property owners' house, and building inspector in fact only had two meetings with property owners prior to collapse. *District of Columbia v. Forsman*, 580 A.2d 1314, 1990 D.C. App. LEXIS 250 (1990), writ of certiorari denied by 502 U.S. 858, 112 S. Ct. 173, 116 L. Ed. 2d 136, 1991 U.S. LEXIS 5318, 60 U.S.L.W. 3262 (1991).

Building inspector's limited involvement in monitoring construction or demolition site does not place duty on District of Columbia to monitor such activities continuously thereafter.

§ 6-1405 HOUSING & BUILDING RESTRICTIONS & REGULATIONS

District of Columbia v. Forsman, 580 A.2d 1314, 173, 116 L. Ed. 2d 136, 1991 U.S. LEXIS 5318, 1990 D.C. App. LEXIS 250 (1990), writ of certiorari denied by 502 U.S. 858, 112 S. Ct. 60 U.S.L.W. 3262 (1991).

§ 6-1405. Conflicts.

(a) If conflict arises between the provisions of this chapter and the D.C. Supplement, the Model Codes, or their reference standards, the provisions of this chapter shall take precedence.

(b) If conflict arises between the D.C. Supplement, the Model Codes, and their reference standards:

(1) The provisions of the D.C. Supplement shall take precedence over the Model Codes and their reference standards, except as provided in paragraphs (2) and (3) of this subsection;

(2) The provisions of the BOCA Basic/National Existing Structures Code/1984, 1st Edition, and the CABO One and Two Family Dwelling Code, 1983 Edition, shall take precedence over the D.C. Supplement, other Model Codes, and their reference standards with regard to existing structures and Use Group R-4 buildings;

(3) The most stringent provisions of the BOCA Basic/National Existing Structures Code/1984, 1st Edition or the CABO One and Two Family Dwelling Code, 1983 Edition, shall take precedence when a building is both an existing structure and in Use Group R-4;

(4) The provisions of the 1985 Supplement to the BOCA Basic/National Building Code, Basic/National Fire Prevention Code, Basic/National Mechanical Code, and Basic/National Plumbing Code shall take precedence over the provisions of the other Model Codes that they amend; and

(5) The provisions of the Model Codes other than their reference standards shall take precedence over their reference standards.

(Mar. 21, 1987, D.C. Law 6-216, § 6, 34 DCR 1072.)

Prior Codifications. — 1981 Ed., § 5-1305.

Legislative history of Law 6-216. — For legislative history of D.C. Law 6-216, see Historical and Statutory Notes following § 6-1401.

Mayor's Orders. — Establishment of Building Code Advisory Committee: See Mayor's Order 89-257, November 7, 1989.

§ 6-1405.01. Administration of construction regulations.

(a) The Mayor or the Mayor's designee is authorized to administer and enforce the provisions of this chapter, including provisions regarding the Construction Codes, building permits, and certificates of occupancy, and all regulations issued pursuant thereto. In regulating and enforcing building permits and certificates of occupancy, the Director shall require an employer, as that term is defined in § 32-1501(10), prior to the issuance of a construction permit to produce proof of Workers' Compensation insurance coverage. The Director shall seek to assure that all buildings and structures in the District of Columbia are in full compliance with the Construction Codes adopted pursuant to this chapter and all zoning provisions in subchapter IV of Chapter 6 of this title, and regulations issued and enforced under those provisions. The

Director shall seek to administer all building permits, certificates of occupancy and other provisions of this chapter, and all regulations issued hereunder, in a manner that is fair, efficient, predictable, readily adaptable to new technologies, consumer-oriented, devoid of unnecessary time delays and other administrative burdens, cost-effective, and directed at enhancing the protection of the public health, welfare, safety and quality of life.

(b) The Director may enforce the regulations issued pursuant to this chapter by means of covenants or agreements between the Department of Consumer and Regulatory Affairs and an affected party. All such covenants or agreements shall have the prior approval of the Office of the Corporation Counsel for legal sufficiency and compliance with all District and other laws. Where the Office of the Corporation Counsel determines that, under District law, a covenant or agreement may require the review and approval of other District agencies, it shall so notify such agencies and establish an inter-agency process for review and, if required under District law, approval. The Director shall coordinate with the Office of the Corporation Counsel the time required for the review and recommendations by the Office of the Corporation Counsel of any covenant or agreement proposed pursuant to this chapter.

(c) The Building Code Official shall have authority over the approval, installation, design, modification, maintenance, testing, and inspection of all new and existing fire protection systems.

(d) For purposes of this section, the term “Director” means the Director of the Department of Consumer and Regulatory Affairs.

(e) To the extent not [sic] authorized by § 6-661.01, and notwithstanding § 6-1409(a), the Mayor, from time to time, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], may establish and revise fees and additional charges regarding the Construction Codes, building permits, and certificates of occupancy, without submission of the proposed rules to the Council for its prior review and approval.

(Mar. 21, 1987, D.C. Law 6-216, § 6a, as added Apr. 20, 1999, D.C. Law 12-261, § 3002, 46 DCR 3142; Oct. 1, 2002, D.C. Law 14-190, § 302(b), 49 DCR 6968; Dec. 7, 2004, D.C. Law 15-205, § 1103, 51 DCR 8441; Sept. 24, 2010, D.C. Law 18-223, § 2023, 57 DCR 6242.)

Prior Codifications. — 1981 Ed., § 5-1305.1.

Effect of amendments. — D.C. Law 14-190 added subsecs. (c) and (d).

D.C. Law 15-205, in subsec. (a), substituted “occupancy, the Director shall require an employer, as that term is defined in § 32-1501(10), prior to the issuance of a construction permit to produce proof of Workers’ Compensation insurance coverage. The Director”. for “occupancy, the Director”.

D.C. Law 18-223 added subsec. (e).

Temporary Amendment of Section. — Section 203 of D.C. Law 18-222 added subsec. (e) to read as follows:

“(e) To the extent not authorized by paragraph 7 of the General Expenses titles of An Act

making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirteenth, nineteen hundred and ten, and for other purposes, approved March 3, 1909 (35 Stat. 689; D.C. Official Code § 6-661.01), and notwithstanding section 10(a), the Mayor, from time to time, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.), may establish and revise fees and additional charges regarding the Construction Codes, building permits, and certificates of occupancy, without submission of the proposed rules to the Council for its prior review and approval.”.

Section 2002(b) of D.C. Law 18-222 provided

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that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 302(b) of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

For temporary (90 day) amendment of section, see § 1103 of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 1103 of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

For temporary (90 day) amendment of section, see § 203 of Fiscal Year 2010 Balanced Budget Support Emergency Act of 2010 (D.C. Act 18-450, June 28, 2010, 57 DCR 5635).

For temporary (90 day) amendment of section, see § 203 of Fiscal Year 2010 Balanced Budget Support Congressional Review Emergency Act of 2010 (D.C. Act 18-531, August 6, 2010, 57 DCR 8109).

For temporary (90 day) amendment of section, see § 2023 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 12-261. — Law 12-261, the “Second Omnibus Regulatory Re-

form Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-845, which was referred to the Committee of the Whole. The bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615 and transmitted to both Houses of Congress for its review. D.C. Law 12-261 became effective April 20, 1999.

Legislative history of Law 14-190. — For Law 14-190, see notes following § 6-1401.

Legislative history of Law 15-205. — For Law 15-205, see notes following § 6-623.01.

Legislative history of Law 18-223. — Law 18-223, the “Fiscal Year 2011 Budget Support Act of 2010”, was introduced in Council and assigned Bill No. 18-731, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 26, 2010, and June 15, 2010, respectively. Signed by the Mayor on July 2, 2010, it was assigned Act No. 18-462 and transmitted to both Houses of Congress for its review. D.C. Law 18-223 became effective on September 24, 2010.

Short title. — Land Use, Development, and Code Enforcement Amendment Act of 1998: Section 3001 of title III of D.C. Law 12-261 provided that this title may be cited as the “Land Use, Development, and Code Enforcement Amendment Act of 1998.”

CASE NOTES

Cause of action.

District of Columbia statute governing administration of construction regulations did not provide homeowner with private cause of action against District of Columbia Department of Regulatory and Consumer Affairs (DCRA), department employees, and mayor, related to stop-work order issued on renovations being performed at homeowner’s home, even though homeowner was building and demolition permit holder, and was thus likely part of class for

whose benefit statute was created; no indication existed of any legislative intent to create private right of action and underlying purpose of legislative scheme was to ensure that construction occur in manner to promote public safety, health, and welfare, and not to ensure that individuals involved in projects be afforded particular substantive rights. *Chang v. D.C. Dep’t of Regulatory & Consumer Affairs*, 604 F.Supp.2d 57, 2009 U.S. Dist. LEXIS 26503 (2009).

§ 6-1405.02. Expedited Construction Documents Review Program.

(a) For the purposes of this section and § 6-1405.03, the term:

(1) “Construction documents” mean all drawings that, together with the specifications, describe the proposed building construction or renovation in sufficient detail and provide sufficient information to enable the Director to determine whether it complies with the Construction Codes.

(2) “Construction permit application” means any application made to the Department for construction in private space.

(3) “Department” means the Department of Consumer and Regulatory Affairs.

(4) “Director” means the Director of the Department of Consumer and Regulatory Affairs, or his or her designee.

(5) “District” means the District of Columbia.

(6) “Expedited Construction Documents Review Program” or “Program” means the processing procedure for qualified construction permit applications and construction documents established by subsection (b) of this section.

(7) “Peer Reviewer” means a person certified by the Director to conduct a third party review of one or more components of construction documents as described in § 6-1405.03.

(b) The Mayor shall establish an Expedited Construction Documents Review Program to provide a separate processing procedure to expedite the District’s review of qualified construction permit applications and construction documents; provided, that the application and documents meet the requirements of the Construction Codes. The Expedited Construction Documents Review Program shall incorporate by reference any requirements for third party reviews contained in subsection 108.1 of Title 12A of the District of Columbia Municipal Regulations (12A DCMR § 108.1), and incorporate the expedited review procedures of § 6-1405.03, including pre-submission review by a Peer Reviewer. The Expedited Construction Documents Review Program shall include periodic detailed review by the Director of the documents recommended for submission by the Peer Reviewers.

(c)(1) The Director shall appoint Peer Reviewers. Peer Reviewer applicants shall possess a valid license as an architect or professional engineer in the District pursuant to part A or J of subchapter I-B of Chapter 28 of Title 47. The Mayor shall promulgate regulations to establish the requirements for certification of Peer Reviewers, including training and experience requirements, within 180 days of June 25, 2002.

(2) When appointing a person as a Peer Reviewer, the Director shall:

(A) Specify the construction permit applications and construction documents which the Peer Reviewer may review and recommend for submission; and

(B) Assign a Peer Reviewer number to the person.

(3) To maintain an appointment, a Peer Reviewer shall:

(A) Maintain the license specified in paragraph (1) of this subsection and provide evidence thereof annually; and

(B) Recommend for submission construction permit applications and construction documents which consistently meet the requirements of the Construction Codes.

(4)(A) The Peer Reviewer appointment may be revoked by the Director for failure to comply with the requirements of this section or § 6-1405.03. The revocation shall be in writing and state the provision of this section or § 6-1405.03 with which the Peer Reviewer has not complied.

(B) The Peer Reviewer appointment may be reinstated if the Director determines that the basis for revocation of Peer Reviewer appointment has been remedied and the person possesses the license specified in paragraph (1) of this subsection.

(Mar. 21, 1987, D.C. Law 6-216, § 6b, as added June 25, 2002, D.C. Law

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14-162, § 101, 49 DCR 4438; Mar. 13, 2004, D.C. Law 15-105, § 43, 51 DCR 881.)

Effect of amendments. — D.C. Law 15-105, in subsec. (c)(1), validated a previously made technical correction.

Legislative history of Law 14-162. — For Law 14-162, see notes following § 6-1401.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 6-711.01.

Editor's notes. — Section 301 of D.C. Law 14-162 provided: "Pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.), the Mayor may issue rules to implement the provisions of this act."

§ 6-1405.03. Expedited construction documents review procedures.

(a)(1) To participate in the Expedited Construction Document Review Program, a property owner or authorized agent shall notify the Department in the manner provided by regulation, stating:

(A) The name of the Peer Reviewer or Reviewers;

(B) That the Peer Reviewer is a certified Peer Reviewer pursuant to requirements set forth in § 6-1405.02(c)(1); and

(C) The components of the construction documents which will be reviewed, certified for compliance with the Construction Codes, and recommended for submission under the Program.

(2) A property owner or authorized agent may elect to participate in the Program at any time until the Department has completed its review of the construction permit application and construction documents which have been submitted. A property owner or authorized agent who has previously elected not to participate in the Program may amend, in writing, its prior application to notify the Department that the property owner or authorized agent elects to utilize the Expedited Construction Documents Review Program. The property owner or authorized agent may elect either a full or partial review by a Peer Reviewer. The fee, if any, for the amended application shall be nominal.

(b)(1) Before a property owner or authorized agent may submit construction documents or components of the construction documents to the Director for review and approval under the Expedited Construction Documents Review Program, the construction documents or components of the construction documents shall be reviewed, certified for compliance with the Construction Codes, and recommended for submission by a Peer Reviewer.

(2) The following components of construction documents may be reviewed by a Peer Reviewer before the submission of the construction documents to the Department:

(A) Architectural;

(B) Elevators;

(C) Structural;

(D) Mechanical;

(E) Plumbing;

(F) Electrical; and

(G) Fire and Life Safety.

(3) A Peer Reviewer shall review only those components of the construc-

tion documents for which the Peer Reviewer is authorized by the Director under § 6-1405.02(c)(2)(A).

(4) To qualify to work as a Peer Reviewer on a project, the Peer Reviewer shall not be controlled by the owner of the project (including any person or entity with an ownership interest in the project), the general contractor, the subcontractors, or any person or entity responsible for the design, construction, or management of the project. The Peer Reviewer shall not serve or have served on the same project as an advisor or consultant to the owner or the design team in connection with Construction Codes matters for which the Peer Reviewer is providing plan review and certification services, while at the same time providing those consulting services.

(5) A person, or firm with which that person is affiliated as an owner or employee, who has performed any work for a project, including preparing design plans for any construction documents or components of construction documents, including architectural and structural plans, mechanical plans, plumbing plans, and electrical plans, shall not be eligible to serve as a Peer Reviewer for the project.

(6) The Peer Reviewer shall not enter into a contract to review a project if he or she determines that there may be a conflict with the qualifications specified in paragraph (4) of this subsection. The Peer Reviewer shall notify the Director, for resolution, cases of doubtful interpretation. The Director may request advice in such cases from the Corporation Counsel or the Ethics Advisor of the Department. The Director shall resolve disputes on these matters and the decision of the Director shall be final.

(7) The Peer Reviewer shall disclose any potential conflicts of interest that may arise at any time between the Peer Reviewer and the project or parties connected to the project.

(8) The Peer Reviewer applying for certification shall provide a notarized sworn affidavit to the Director, attesting that the Peer Reviewer will remain independent of conflicts of interest as set forth in this section.

(c)(1) Construction documents or the components of the construction documents which have been reviewed, certified for compliance with the Construction Codes, and recommended for submission by a Peer Reviewer shall be reviewed by the Director on a priority basis.

(2) If the Director is satisfied that the construction documents or the components of the construction documents conform with the requirements of the Construction Codes and all applicable laws, rules, and regulations, the Director shall approve the construction documents or components of the construction documents within 15 days of submission.

(d) A Peer Reviewer shall review, certify for compliance with the Construction Codes, and recommend each component of the construction documents for submission to the Director.

(e)(1)(A) Construction documents accepted by the Director for review under the Expedited Construction Documents Review Program shall contain a written certification by a Peer Reviewer, in a form promulgated by the Mayor. The certification shall contain:

(i) An identification of the components reviewed (such as electrical or structural);

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(ii) The lot, square, and address of the project; and

(iii) An affirmative statement by the Peer Reviewer that the recommendation for submission is based upon his or her professional knowledge and belief and it is in conformance with the applicable provisions of the Construction Codes.

(B) The Mayor shall promulgate, by regulation, the forms that shall be used by Peer Reviewers to comply with the requirements of this section. The Director shall review these completed forms for consistency and thoroughness.

(2) The Peer Reviewer number, the District Architect's or Engineer's License number, and the Peer Reviewer's signature shall be included with the certification set forth in paragraph (1) of this subsection.

(f) The Director shall maintain a tracking system to monitor the recommendations of the Peer Reviewers and the consistency with which construction documents recommended by them conform to the applicable provisions of the Construction Codes.

(g) This section shall not relieve a person who prepares and submits construction documents of any obligations or liabilities, otherwise existing under law, and shall not relieve the District of its obligation to review all construction documents in the manner otherwise prescribed by law.

(Mar. 21, 1987, D.C. Law 6-216, § 6c, as added June 25, 2002, D.C. Law 14-162, § 101, 49 DCR 4438.)

Legislative history of Law 14-162. — For Law 14-162, see notes following § 6-1401.

Editor's notes. — Section 301 of D.C. Law 14-162 provided: "Pursuant to Title I of the District of Columbia Administrative Procedure

Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.), the Mayor may issue rules to implement the provisions of this act."

§ 6-1405.04. Third party inspections.

(a) The Mayor shall allow third party inspectors to certify the work performed pursuant to a building permit.

(b) The Mayor shall promulgate rules to establish the minimum requirements for third party inspectors, including training and experience requirements, within 180 days of June 25, 2002.

(c) A person, or a firm with which that person is affiliated as an owner or employee, who has performed any work for a project for which the property owner or the authorized agent has elected to use third party inspectors, including inspectors of architectural and structural plans, mechanical plans, plumbing plans, and electrical plans, shall not be eligible to serve as a third party inspector for any component on the project.

(Mar. 21, 1987, D.C. Law 6-216, § 6d, as added June 25, 2002, D.C. Law 14-162, § 101, 49 DCR 4438.)

Legislative history of Law 14-162. — For Law 14-162, see notes following § 6-1401.

Editor's notes. — Section 301 of D.C. Law

14-162 provided: "Pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204;

D.C. Official Code § 2-501 et seq.), the Mayor may issue rules to implement the provisions of this act.”

§ 6-1406. Penalties.

(a) Except as provided in subsection (b) of this section, any person who violates any of the provisions of the Construction Codes or orders issued under the authority of the Construction Codes shall, upon conviction, be subject to a fine not to exceed \$2000, or imprisonment not to exceed 90 days, or both, for each violation.

(b) Any person who violates any of the provisions of the Fire Prevention Code, Articles 14, 15, and 17 of the Building Code, Article 9 of the Existing Structures Code, or orders issued under the authority of these provisions shall, upon conviction, be subject to a fine not to exceed \$2000, or imprisonment not to exceed 90 days, or both, for each violation.

(c) Civil fines, penalties, and fees may be imposed, in addition to other available remedies, for any infraction of the provisions of the Construction Codes, including the provisions of the Fire Prevention Code, pursuant to Chapter 18 of Title 2 (“Civil Infractions Act”). Adjudication of any infraction shall be pursuant to the Civil Infractions Act.

(d) Prosecutions pursuant to subsections (a) and (b) of this section shall be brought in the name of the District of Columbia by the Attorney General for the District of Columbia.

(Mar. 21, 1987, D.C. Law 6-216, § 7, 34 DCR 1072; Mar. 8, 1991, D.C. Law 8-237, § 30, 38 DCR 314; Oct. 18, 2005, D.C. Law 16-24, § 2(a), 52 DCR 8080.)

Cross references. — Smoke detector violations, election of remedies, see § 6-751.09.

Prior Codifications. — 1981 Ed., § 5-1306.

Effect of amendments. — D.C. Law 16-24, in subsec. (a), substituted “\$300” for “\$2000” and substituted “10 days” for “90 days”; in subsec. (b), substituted “\$300” for “\$2000”; in subsec. (c), substituted “may be imposed as alternative sanctions for any infraction” for “may be imposed, in addition to other available remedies, for any infraction”; and added subsec. (d).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(a) of Abatement of Nuisance Construction Projects Temporary Amendment Act of 2005 (D.C. Law 16-4, May 14, 2005, law notification 52 DCR 5427).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(a) of Abatement of Nuisance Construction Projects Emergency Amendment Act of 2005 (D.C. Act 16-42, February 17, 2005, 52 DCR 3045).

Legislative history of Law 6-216. — For legislative history of D.C. Law 6-216, see Historical and Statutory Notes following § 6-1401.

Legislative history of Law 8-237. — Law 8-237, the “Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985 Technical and Clarifying Amendments Act of 1990,” was introduced in Council and assigned Bill No. 8-203, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-320 and transmitted to both Houses of Congress for its review.

Legislative history of Law 16-24. — Law 16-24, the “Abatement of Nuisance Construction Projects Amendment Act of 2005,” was introduced in Council and assigned Bill No. 16-30 which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 21, 2005, and July 6, 2005, respectively. Signed by the Mayor on July 14, 2005, it was assigned Act No. 16-133 and transmitted to both Houses of Congress for its review. D.C. Law 16-24 became effective on October 18, 2005.

CASE NOTES

Amended permits.

Amended permit authorizing construction of new single family home did not relate back to original permit that permitted renovation and addition to existing single family home so as to

cure criminal violations for building without permit that were committed prior to issuance of amended permit. *District of Columbia v. Economides*, 968 A.2d 1032, 2009 D.C. App. LEXIS 50 (2009).

§ 6-1406.01. Construction and Zoning Compliance Management Fund. [Repealed].

Repealed.

(Mar. 21, 1987, D.C. Law 6-216, § 7a, as added Dec. 7, 2004, D.C. Law 15-205, § 2042, 51 DCR 8441; Mar. 2, 2007, D.C. Law 16-191, § 128, 53 DCR 6794; Mar. 3, 2010, D.C. Law 18-111, § 2021(a), 57 DCR 181; Sept. 14, 2011, D.C. Law 19-21, § 9037, 58 DCR 6226.)

Emergency legislation. — For temporary (90 day) addition, see § 2042 of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) addition, see § 2042 of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

For temporary (90 day) amendment of section, see § 2021(a) of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 2021(a) of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 15-205. — For Law 15-205, see notes following § 6-623.01.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 6-224.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 6-226.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 6-226.

Short title. — Short title of subtitle D of title II of Law 15-205: Section 2041 of D.C. Law 15-205 provided that subtitle D of title II of the act may be cited as the Construction and Zoning Compliance Management Fund Amendment Act of 2004.

Short title: Section 2020 of D.C. Law 18-111 provided that subtitle C of title II of the act may be cited as the “Zoning Enhanced Customer Services Amendment Act of 2009”.

§ 6-1406.02. Compliance letter fees.

The Office of Zoning Administrator administrative fee for the issuance of compliance letters shall be as follows:

- (1) Zoning compliance letter for a single lot: \$25.
- (2) Zoning compliance letter for all other requests: \$100.

(Mar. 21, 1987, D.C. Law 6-216, § 7b, as added Mar. 3, 2010, D.C. Law 18-111, § 2021(b), 57 DCR 181.)

Emergency legislation. — For temporary (90 day) addition, see § 2021(b) of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) addition, see

§ 2021(b) of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 18-111. — For Law 18-111, see notes following § 6-226.

§ 6-1407. Injunctions.

- (a) Whenever it appears that any person, association, or business entity has

engaged, is engaged, or is about to engage in acts or practices constituting a violation or infraction of any provision or orders issued under the Construction Codes, the Office of the Attorney General for the District of Columbia may bring an action in the Superior Court of the District of Columbia for injunctive relief. Injunctive relief shall be granted on a showing that it will prevent illegal construction activity in the District of Columbia. A plaintiff shall not be required to prove irreparable harm to obtain a preliminary injunction.

(b) The injunctive relief shall include:

(1) Ordering the sealing of structures and locations at which construction activity has occurred or is occurring in violation of the Construction Codes;

(2) Ordering the cessation of all construction and remodeling activity at locations in which, or in structures where, construction activity has occurred or is occurring in violation of the Construction Codes;

(3) Ordering the removal or correction to structures built or altered in violation of the Construction Codes; or

(4) Any other equitable relief that prevents illegal construction activity in the District of Columbia.

(c) In addition, upon a proper showing, an ex parte, interlocutory, or permanent injunction may be granted without bond. The Superior Court of the District of Columbia may also issue a mandatory injunction commanding compliance with any provision or order issued under the Construction Codes.

(Mar. 21, 1987, D.C. Law 6-216, § 8, 34 DCR 1072; Oct. 18, 2005, D.C. Law 16-24, § 2(b), 52 DCR 8080.)

Prior Codifications. — 1981 Ed., § 5-1307.

Effect of amendments. — D.C. Law 16-24 rewrote the section, which had read as follows: “Whenever it appears that any person, association, or business entity has engaged, is engaged, or is about to engage in acts or practices constituting a violation or infraction of any provision of the Construction Codes or orders issued under the authority of the Construction Codes, the Corporation Counsel may bring an action in the Superior Court of the District of Columbia to enjoin those acts or practices, and upon a proper showing, an ex parte, interlocutory, or permanent injunction may be granted without bond. The Superior Court of the District of Columbia may also issue a mandatory injunction commanding compliance with any

provision of or order issued under the authority of the Construction Codes.”

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(b) of Abatement of Nuisance Construction Projects Temporary Amendment Act of 2005 (D.C. Law 16-4, May 14, 2005, law notification 52 DCR 5427).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(b) of Abatement of Nuisance Construction Projects Emergency Amendment Act of 2005 (D.C. Act 16-42, February 17, 2005, 52 DCR 3045).

Legislative history of Law 6-216. — For legislative history of D.C. Law 6-216, see Historical and Statutory Notes following § 6-1401.

Legislative history of Law 16-24. — For Law 16-24, see notes following § 6-1406.

§ 6-1408. Documents Act.

The editorial standards for numbering, grammar, and style required by the District of Columbia Office of Documents Act, § 2-612(5), shall not apply to the Construction Codes. The Construction Codes shall be consolidated by the District of Columbia Office of Documents into a single new title of the District of Columbia Municipal Regulations to be designated by the District of Columbia Office of Documents. Each component part of the Construction Codes shall be available for sale separately.

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(Mar. 21, 1987, D.C. Law 6-216, § 9, 34 DCR 1072.)

Prior Codifications. — 1981 Ed., § 5-1308. legislative history of D.C. Law 6-216, see Historical and Statutory Notes following § 6-1401.
Legislative history of Law 6-216. — For

§ 6-1408.01. Building permit denial.

An applicant may be denied a building permit by the Mayor for a period of:

- (1) Ten years from the date of final order on a criminal conviction against the applicant for a Construction Code or zoning regulations crime;
- (2) Three years after receipt of 5 or more stop work orders by the applicant in any 12-month period;
- (3) Three years after final administrative adjudication against the applicant for violation of the Construction Code or zoning regulations; or
- (4) Three years from the date of revocation of a building permit or certificate of occupancy issued to the applicant.

(Mar. 21, 1987, D.C. Law 6-216, § 8a, as added Oct. 18, 2005, D.C. Law 16-24, § 2(c), 52 DCR 8080.)

Legislative history of Law 16-24. — For Law 16-24, see notes following § 6-1406.

§ 6-1409. Amendments; supplements; editions.

(a) All future amendments, supplements, and editions of the Construction Codes shall be adopted only upon authority of the government of the District of Columbia. The Mayor may issue proposed rules to amend the Construction Codes and to adopt new supplements and editions of the Model Codes in whole or in part pursuant to subchapter I of Chapter 5 of Title 2. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part by resolution within this 45-day review period, the proposed rules shall be deemed approved. The rules shall not take effect until approved or deemed approved by the Council.

(a-1) Notwithstanding the provisions of subsection (a) of this subsection, the Mayor may amend the provisions of subsection 3107.18 of Title 12A of the District of Columbia Municipal Regulations (12A DCMR § 3107.18), including the specifications, drawings, limitations, and requirements of the Illustrations, as defined in subsection 3107.18.11 of Title 12A of the District of Columbia Municipal Regulations (12A DCMR § 3107.18.11), by rulemaking pursuant to § 2-505, without submission of the proposed rules to the Council for its prior review and approval.

(b) Within 180 days after the adoption of the International Building Code, published by the International Building Code Council, Inc. ("IBC"), and any subsequent amendments thereto, the Mayor shall propose an amendment to the Construction Code in accordance with subsection (a) of this section to adopt the IBC.

(Mar. 21, 1987, D.C. Law 6-216, § 10, 34 DCR 1072; Oct. 1, 2002, D.C. Law

14-190, § 302(c), 49 DCR 6968; Apr. 5, 2005, D.C. Law 15-278, § 3, 52 DCR 835.)

Section references. — This section is referred to in § 6-1401.

Prior Codifications. — 1981 Ed., § 5-1309.

Effect of amendments. — D.C. Law 14-190 designated subsec. (a); and added subsec. (b).

D.C. Law 15-278 added subsec. (a-1).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3 of Gallery Place Project Graphics Temporary Amendment Act of 2004 (D.C. Law 15-221, March 16, 2005, law notification 52 DCR 3547).

Emergency legislation. — For temporary (90 day) amendment of section, see § 302(c) of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

For temporary (90 day) amendment of section, see § 3 of Gallery Place Project Graphics Emergency Amendment Act of 2004 (D.C. Act 15-508, August 2, 2004, 51 DCR 8945).

For temporary (90 day) amendment of section, see § 3 of Gallery Place Project Graphics Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-626, November 30, 2004, 52 DCR 1131).

For temporary (90 day) amendment of section, see § 3 of Gallery Place Project Graphics Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-38, February 17, 2005, 52 DCR 3031).

For temporary (90 day) amendment of section, see § 3(c) of the Sign Regulation Emergency Amendment Act of 2012 (D.C. Act 19-387, July 11, 2012, 59 DCR 8491).

Legislative history of Law 6-216. — For legislative history of D.C. Law 6-216, see Historical and Statutory Notes following § 6-1401.

Legislative history of Law 14-190. — For Law 14-190, see notes following § 6-1401.

Legislative history of Law 15-278. — Law 15-278, the “Gallery Place Project Graphics Amendment Act of 2004”, was introduced in

Council and assigned Bill No. 15-313, which was referred to the Committee on Consumers and Regulatory Affairs. The Bill was adopted on first and second readings on November 9, 2004, and December 7, 2004, respectively. Signed by the Mayor on December 29, 2004, it was assigned Act No. 15-669 and transmitted to both Houses of Congress for its review. D.C. Law 15-278 became effective on April 5, 2005.

Delegation of Authority. — Delegation of authority pursuant to Law 6-216, see Mayor’s Order 87-259, November 13, 1987.

Delegation of Authority to the Director of the Department of Consumer and Regulatory Affairs—Construction Codes, see Mayor’s Order 2009-224, December 18, 2009 (56 DCR 9665).

Resolutions. — Resolution 13-291, the “Construction Codes Amendments Approval Resolution of 1999”, was approved effective October 5, 1999.

Resolution 14-121, the “Construction Codes Amendments Approval Resolution of 2001”, was approved effective June 5, 2001.

Resolution 15-338, the “Construction Codes Amendments Approval Resolution of 2003”, was approved effective December 2, 2003.

Resolution 17-877, the “Construction Codes Amendment Approval and Disapproval Resolution of 2008”, was approved effective December 2, 2008.

Editor’s notes. — Building and Land Regulation Administration User Fee Approval and Disapproval Resolution of 1994: Pursuant to Resolution 10-370, effective June 7, 1994, the Council approved, in part, and disapproved, in part, rules to adopt a new Building and Land Regulation Administration User Fee Schedule.

Building and Land Regulation Administration User Fee Amendment Rulemaking Approval Resolution of 1994: Pursuant to Proposed Resolution 11-16, deemed approved February 18, 1995, Council approved Rules to adopt an amendment to the Building and Land Regulation Administration User Fee Schedule.

CASE NOTES

Liability of District.

Provision in District of Columbia demolition permit regulations requiring applicant to obtain liability insurance did not single out any particular category of persons for special protection against risks that attended demolition work such that exception-to-public-duty doctrine could be invoked by property owners to hold District liable for its alleged negligence in failing to require adjacent landowner to obtain demolition permit; property owners were merely members of general public protected by

demolition permit regulations. D.C. Code 1981, § 5-1304. *District of Columbia v. Forsman*, 580 A.2d 1314, 1990 D.C. App. LEXIS 250 (1990), writ of certiorari denied by 502 U.S. 858, 112 S. Ct. 173, 116 L. Ed. 2d 136, 1991 U.S. LEXIS 5318, 60 U.S.L.W. 3262 (1991).

District of Columbia building inspector’s contacts with property owners in connection with demolition work on adjacent property were not sufficient to give rise to special relationship that would allow property owners to invoke exception-to-public-duty doctrine and hold Dis-

trict liable for its alleged negligence in failing to require adjacent landowner to obtain demolition permit, notwithstanding that building inspector assisted property owners in getting adjacent landowner to perform certain repairs; repairs were unrelated to underpinning work that led to collapse of property owners' house, and building inspector in fact only had two meetings with property owners prior to collapse. *District of Columbia v. Forsman*, 580 A.2d 1314, 1990 D.C. App. LEXIS 250 (1990), writ of certiorari denied by 502 U.S. 858, 112 S.

Ct. 173, 116 L. Ed. 2d 136, 1991 U.S. LEXIS 5318, 60 U.S.L.W. 3262 (1991).

Building inspector's limited involvement in monitoring construction or demolition site does not place duty on District of Columbia to monitor such activities continuously thereafter. *District of Columbia v. Forsman*, 580 A.2d 1314, 1990 D.C. App. LEXIS 250 (1990), writ of certiorari denied by 502 U.S. 858, 112 S. Ct. 173, 116 L. Ed. 2d 136, 1991 U.S. LEXIS 5318, 60 U.S.L.W. 3262 (1991).

§ 6-1410. Building Rehabilitation Code.

(a) For purposes of this section and § 6-1411, the term:

(1) "Addition" means an increase in:

- (A) Building area;
- (B) Aggregate floor area;
- (C) Height; or
- (D) Number of stories of a building or structure.

(2) "Alteration" means the:

- (A) Reconfiguration of any space;
- (B) Addition or elimination of any door or window;
- (C) Reconfiguration or extension of any system; or
- (D) Installation of any additional equipment.

(3) "Change of occupancy" means a change in the purpose or level of activity within a structure that involves a change in application of the requirements of the BRC.

(4) "Construction permit application" means any application made to DCRA for construction in private space.

(5) "BRC" means the Building Rehabilitation Code.

(6) "DCRA" means the Department of Consumer and Regulatory Affairs.

(7) "District of Columbia Building Rehabilitation Code Advisory Council" or "Rehabilitation Council" means the 19-member board appointed by the Mayor to advise the Mayor on the development, adoption, and revisions to the BRC, as well as other related matters set forth in § 6-1411.

(8) "Existing building" means any building or structure that was erected and occupied or issued a certificate of occupancy at least one year before a construction permit application for that building or structure was made to DCRA.

(9) "Reconstruction" means the:

- (A) Reconfiguration of a space which affects an exit or element of the egress access shared by more than a single occupant;
- (B) Reconfiguration of a space such that the work area is not permitted to be occupied because existing means of egress and fire protection systems, or their equivalent, are not in place or continuously maintained; or
- (C) Extensive modifications.

(10) "Rehabilitation" means any construction work undertaken in an existing building that includes repair, renovation, modification, reconstruction, change of occupancy, or addition.

(11)(A) “Renovation” means the:

- (i) Change, strengthening, or addition of load bearing elements; or
- (ii) Refinishing, replacing, bracing, strengthening, upgrading, or extensive repair of existing materials, elements, components, equipment, or fixtures.

(B) The term “renovation” shall not include:

- (i) Reconfiguration of space; or
- (ii) Interior and exterior painting.

(12) “Repair” means the patching, restoration, or minor replacement of materials, elements, components, equipment, or fixtures for the purpose of maintaining these materials, elements, components, equipment, or fixtures in good or sound condition.

(b) The Mayor shall issue rules to adopt the BRC, which shall be modeled on the Nationally Applicable Recommended Rehabilitation Provisions developed by the United States Department of Housing and Urban Development or the International Existing Building Code developed by the International Code Council. The Mayor shall submit the proposed rules to the Council for its review within 360 days of June 25, 2002. The Council shall have 90 days, exclusive of Saturdays, Sundays, holidays, and days of Council recess, in which to review and affirmatively approve the BRC. If the Council does not approve the BRC, it shall be deemed disapproved.

(c) The BRC shall, at a minimum:

(1) Maintain a level of safety consistent with existing codes and provide for multiple categories of work with multiple compliance standards;

(2) Be enforceable by the Mayor using existing enforcement procedures;

(3) Apply to repair, renovation, modification, reconstruction, change of occupancy, and addition to an existing building; and

(4) Provide for an expedited review process for proposed amendments to the BRC submitted by the Council or another source.

(d) Within 180 days after the adoption of the BRC and any subsequent amendments thereto, the Mayor shall propose amendments to make the Construction Codes consistent with the BRC.

(e) The Mayor, in cooperation with the District of Columbia Building Rehabilitation Code Advisory Council, shall review the BRC and propose amendments at least every 3 years.

(f) To enable the electronic database established under § 6-1403.01 to remain current, the Rehabilitation Council shall submit an amendment to DCRA at least 15 days before June 25, 2002.

(Mar. 21, 1987, D.C. Law 6-216, § 10a, as added June 25, 2002, D.C. Law 14-162, § 201(a)(3), 49 DCR 4438.)

Emergency legislation. — For temporary (90 day) repeal of section, see § 3(d) of the Sign Regulation Emergency Amendment Act of 2012 (D.C. Act 19-387, July 11, 2012, 59 DCR 8491).

Legislative history of Law 14-162. — For Law 14-162, see notes following § 6-1401.

Editor’s notes. — Section 301 of D.C. Law

14-162 provided: “Pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.), the Mayor may issue rules to implement the provisions of this act.”

§ 6-1411. Establishment of the District of Columbia Building Rehabilitation Code Advisory Council.

(a) The Mayor shall establish the District of Columbia Building Rehabilitation Code Advisory Council consisting of the following members from among whom the Mayor shall designate a Chair:

(1) The Director of Housing and Community Development, or his or her designee;

(2) The Director of the DCRA, or his or her designee;

(3) The Chief of the Fire and Emergency Medical Services Department, or his or her designee;

(4) The Chair of the Historic Preservation Review Board, or his or her designee;

(5) The Chair of the Mayor's Committee on Persons with Disabilities, or his or her designee;

(6) The Chair of the Building Code Advisory Committee established by Mayor's Order 89-257, November 7, 1989, who shall serve as an ex-officio member; and

(7) Fourteen members appointed by the Mayor, as follows:

(A) Four representatives of the building trades who are directly involved or have experience in code setting or enforcement, including plumbers; electricians; heating, ventilation, air-conditioning, and refrigeration contractors; and boiler operators;

(B) Two architects practicing in the District whose practice involves a significant portion of rehabilitation projects;

(C) A professional engineer;

(D) Two contractors specializing in rehabilitation construction;

(E) A commercial and industrial building owner or developer;

(F) A multifamily building owner or developer; and

(G) Three members of the general public.

(b)(1) The members shall serve a 4-year term; provided, that for the initial appointments under subsection (a)(6) of this section, ½ of the members shall be appointed for 2-year terms.

(2) A member may continue to serve after the expiration of his or her term until a successor is appointed.

(3) A member appointed to fill a vacancy, or after a term has begun, shall serve only for the remainder of the term and until a successor is appointed.

(4) Appointed members shall serve no more than 2 terms.

(5) Members shall serve without compensation and shall be reimbursed for reasonable expenses.

(c) The Rehabilitation Council shall:

(1) Advise the Mayor on the development, adoption, and revisions to the BRC;

(2) Develop, to the extent possible, the BRC to avoid increased costs to the District arising from implementation of the BRC; and

(3) Provide, to the extent District funds are available, training on the BRC for District personnel responsible for administering the BRC and for public and private construction-related professionals.

(d) DCRA shall provide administrative and staff services to the Rehabilitation Council.

(Mar. 21, 1987, D.C. Law 6-216, § 10b, as added June 25, 2002, D.C. Law 14-162, § 201(a)(3), 49 DCR 4438.)

Emergency legislation. — For temporary (90 day) repeal of section, see § 3(e) of the Sign Regulation Emergency Amendment Act of 2012 (D.C. Act 19-387, July 11, 2012, 59 DCR 8491).

Legislative history of Law 14-162. — For Law 14-162, see notes following § 6-1401.

Editor's notes. — Section 301 of D.C. Law

14-162 provided: "Pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.), the Mayor may issue rules to implement the provisions of this act."

§ 6-1412. Construction Codes revisions for green building practices.

(a) By June 1, 2013, and at least once every 3 years thereafter, the Mayor, in consultation with the Green Building Advisory Council, shall submit to the Council, for approval, revisions to the Construction Codes that shall incorporate as many significant green building practices as practicable for the District of Columbia urban environment. The Mayor shall include as many green building provisions as practicable from the current versions of codes and standards published by the International Code Council. The Mayor may exclude provisions that are not practicable for the District of Columbia urban environment but shall provide evidence of cost or implementation impracticality for the excluded provisions; provided, that the Mayor is not required to consider codes or standards issued by the International Code Council within one year of the submittal date.

(b) Every 6 months after March 8, 2007, the Mayor shall provide a written report on the progress of the current round of Construction Codes revisions to the chairperson of the committee of the Council that oversees the District agency charged with the building permit function. The report accompanying the final Construction Codes revisions shall include a listing and description of each green building practice considered and why each practice was, or was not included, in the respective Construction Codes revision. By June 1, 2013, and after at least every 3 years by June 1 of the relevant year, the Mayor shall submit to the Council for approval Construction Codes revisions that are consistent with the requirements of this section, and that incorporate green building practices developed since the previous Construction Codes revisions.

(Mar. 21, 1987, D.C. Law 6-216, § 10c, as added Mar. 8, 2007, D.C. Law 16-234, § 13, 54 DCR 377; June 5, 2012, D.C. Law 19-139, § 3, 59 DCR 2555.)

Effect of amendments. — D.C. Law 19-139 rewrote subsec. (a); and, in subsec. (b), substituted "By June 1, 2013" for "On or before By January 1, 2010" and substituted "June 1" for "January 1". Prior to amendment, subsec. (a) read as follows: "(a) Within 180 days of March 8, 2007, the Mayor shall promulgate rules to implement this chapter. The proposed rules

shall be submitted to the Council for a 45 day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45 day review period, the proposed rules shall be deemed approved."

Legislative history of Law 16-234. — Law

16-234, the “Green Building Act of 2006”, was introduced in Council and assigned Bill No. 16-515, which was referred to Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 14, 2006, and December 5, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-590 and transmitted to both Houses of Congress for its review. D.C. Law 16-234 became effective on March 8, 2007.

Legislative history of Law 19-139. — Law

19-139, the “Green Building Compliance, Technical Corrections, and Clarification Amendment Act of 2012”, was introduced in Council and assigned Bill No. 19-569, which was referred to the Committee on Environment, Public Works and Transportation. The Bill was adopted on first and second readings on February 7, 2012, and March 6, 2012, respectively. Signed by the Mayor on March 28, 2012, it was assigned Act No. 19-336 and transmitted to both Houses of Congress for its review. D.C. Law 19-139 became effective on June 5, 2012.

CHAPTER 14A. GREEN BUILDING REQUIREMENTS.

Sec.

6-1451.01. Definitions.

6-1451.02. Publicly-owned, leased, and financed buildings and projects.

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6-1451.06. [Repealed].

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6-1451.09. Establishment of the Green Building Advisory Council.

6-1451.10. Exemptions and extensions.

6-1451.11. Rules.

§ 6-1451.01. Definitions.

For the purposes of this chapter, the term:

(1) "Addition" has the same meaning as in § 6-1410(a)(1).

(2) "Applicant" means any individual, firm, limited liability company, association, partnership, government agency, public or private corporation, or other entity that submits construction documents for a building permit or verification.

(2A) "Bond" means a financial instrument posted by an applicant, the proceeds of which shall be paid to the District in its entirety or in part, and deposited in the Green Building Fund, if the project fails to meet the standards required by §§ 6-1451.03 and 6-1451.06.

(3) "Building" means any structure used or intended for supporting or sheltering any use or occupancy.

(4) Repealed.

(5) "Building systems monitoring method" means the specifications for a methodology of collecting information and providing feedback about installed equipment that provide data for the comparison, management, and optimization of actual, as compared to estimated, energy performance.

(5A) "Certificate of occupancy" means the first certificate of occupancy issued for a usable, habitable space at grade or above grade.

(5B) "Common space" means gross floor area within a project shared or available for common use by various occupancies within a project that includes both residential and nonresidential occupancies, including lobbies, corridors, stairways, amenity areas, laundry rooms, boiler rooms, furnace rooms, generator rooms, elevator hoistways, mechanical duct shafts, elevator machine rooms, off-street loading facilities, and off-street parking facilities at or above grade.

(6) "Construction Codes" means the standards and requirements adopted pursuant to Chapter 14 of this title.

(7) "Construction documents" has the same meaning as in § 6-1405.02(a)(1).

(8) "Construction permit application" has the same meaning as in § 6-1410(a)(4).

(8A) "Current edition" means the most recent and currently operative edition of a green building standard approved under § 6-1451.11(b).

(9) "DCRA" means the Department of Consumer and Regulatory Affairs.

(9A) "DDOE" means the District Department of the Environment.

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(10) "Director" means the Director of the Department of Consumer and Regulatory Affairs.

(10A) "District-financed" or "District instrumentality-financed" means:

(A) Financing of a project or contract where funds or resources to be used for construction and development costs, excluding ongoing operational costs, are received from the District, or funds or resources which, in accordance with a federal grant or otherwise, the District administers, including a contract, grant, loan, tax abatement or exemption, land transfer, land disposition and development agreement, or tax increment financing, or any combination thereof; provided, that federal funds may be applied to the financing percentage only if permitted by federal law and grant conditions; or

(B) Financing whose stated purpose is, in whole or in part, to provide for the new construction or substantial rehabilitation of affordable housing.

(11) "Educational facility" means any building that has the provision of education as its primary use.

(12) "ENERGY STAR Portfolio Manager" means the tool developed by EPA ENERGY STAR that rates the performance of a qualifying building, relative to similar buildings nationwide, accounting for the impacts of year-to-year weather variations, building size, location, and several operating characteristics, using the Environmental Protection Agency's national energy performance rating system.

(13) "ENERGY STAR Target Finder" means the tool developed by EPA ENERGY STAR that helps set performance goals and energy ratings for building projects during their design phase.

(14) "Existing building" has the same meaning as in § 6-1410(a)(8).

(14A) "First building permit" means the first permit intended to cover the primary scope of work for a project; provided, that this shall not include permit applications for raze, sheeting and shoring, foundation, or specialty, miscellaneous, or supplemental permits.

(15) "Full-building commissioning" means the process of verification that a building's energy related systems are installed, calibrated, and perform according to project requirements, design basis, and construction documents. The systems that require commissioning include mechanical and passive heating, ventilation, air conditioning, and refrigeration systems, and associated controls such as lighting, domestic hot water systems, and renewable energy systems.

(16) "GBAC" means the Green Building Advisory Council established by § 6-1451.09.

(17) "Green building" means an integrated, whole-building approach to the planning, design, construction, operation, and maintenance of buildings and their surrounding landscapes that help mitigate the environmental, economic, and social impacts of buildings, so that they are energy efficient, sustainable, safe, cost-effective, accessible, healthy, and productive.

(18) "Green building checklist" means a scorecard developed by the USGBC for the purpose of calculating a score on the appropriate LEED rating system.

(19) Repealed.

(20) “Green Building Fund” or “Fund” means the Green Building Fund established by § 6-1451.07.

(21) “Green Communities” means the national green building program designed by Enterprise Community Partners that provides criteria for the design, development, and operation of affordable housing.

(22) “Gross floor area” has the same definition as found in section 199.1 of Title 11 of the District of Columbia Municipal Regulations (11 DCMR § 199.1).

(23) “HVAC&R” means mechanical and passive heating, ventilation, air conditioning, and refrigeration systems.

(24) “ICC” means the International Code Council, a nonprofit organization.

(25) “IECC” means the International Energy Conservation Code developed by the ICC.

(26) “LEED” means the series of Leadership in Energy and Environmental Design green building rating systems designed by the USGBC.

(27) Repealed.

(28) Repealed.

(29) “LEED-H” means the LEED for New Homes (LEED-H) green building rating system being designed by the USGBC.

(30) Repealed.

(31) Repealed.

(31A) “LEED standard for commercial and institutional buildings” means the green building rating system designed by the USGBC for Core & Shell, New Construction, Schools, and Retail: New Construction & Major Renovations.

(32) “Maintenance accountability method” means a system for maintaining building performance standards, including annual building performance reporting that publicly compares actual energy consumption to benchmarks using the ENERGY STAR Portfolio Manager tool for all building types for which it is available; the description of changes to operations and maintenance arrangements and procedures for major energy-consuming equipment; the maintenance of manuals, manufacturer’s literature, model numbers, methods of operation, and maintenance practices for installed building systems; the records of metering systems and mechanisms for the monitoring and control of energy consumption; and the collection of complete “as-built” drawing sets and information on best practices for building maintenance, housekeeping, pest management, and mold prevention.

(32A) “Mixed-use space” means demised space in any residential project that contains at least 50,000 contiguous square feet of gross floor area, exclusive of common space, that is or would be occupied for a nonresidential use.

(33) “New construction” means the construction of any building whether as a stand-alone building or an addition to an existing building. The term “new construction” includes new buildings and additions or enlargements of existing buildings, exclusive of any alterations or repairs to any existing portion of a building.

(33A) “Nonresidential” means any project in which at least 50% of the

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gross floor area of the project, subject to allocation of area for common space, has nonresidential purposes.

(34) Repealed.

(35) "Project" means the construction of single or multiple buildings that are part of one development scheme, built at one time or in phases.

(36) "Property disposition by lease" means a lease, inclusive of options, of real property, as defined in § 10-801.01, for a period of greater than 20 years.

(37) "Property disposition by sale" means a sale of real property, as defined in § 10-801.01, in whole or in part, to the highest bidder for real property 10,000 square feet or more.

(38) Repealed.

(39) "Public school" means schools owned, operated, or maintained by the District of Columbia Public Schools ("DCPS"), or a public charter school, and those schools' educational facilities.

(39A) "Residential" means any project in which more than 50% of the gross floor area of the project, subject to allocation for common space, is used for residential purposes.

(40) "Substantial improvement" means any repair, alteration, addition, or improvement of a building or structure, the cost of which equals or exceeds 50% of the market value of the structure before the improvement or repair is started.

(41) "Total project cost" means the total of:

(A) Hard construction costs;

(B) Site acquisition costs; provided, that a site was acquired within 2 years of first building permit application; and

(C) Soft costs; provided, that the soft costs shall not exceed 25% of the hard construction costs.

(42) "USGBC" means the United States Green Building Council.

(43) "Verification" or "verified" means confirmation by an entity described in § 6-1451.04 that the green building requirements of this chapter have been fulfilled.

(Mar. 8, 2007, D.C. Law 16-234, § 2, 54 DCR 377; Mar. 31, 2011, D.C. Law 18-349, § 2(a), 58 DCR 724; June 5, 2012, D.C. Law 19-139, § 2(a), 59 DCR 2555.)

Effect of amendments. — D.C. Law 18-349 added pars. (2A), (9A), and (31A); in par. (4), substituted "DCRA" for "the Department"; and rewrote par. (9) and repealed pars. (27), (28), (30), (31), and (34).

Temporary Amendment of Section. — Section 2(a) of D.C. Law 19-99 amended par. (40) to read as follows:

"(40) 'Substantial improvement' means any repair, alteration, addition, or improvement of a building or structure, the cost of which equals or exceeds 50% of the market value of the structure before the improvement or repair is started."

Section 4(b) of D.C. Law 19-99 provided that

the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(a) of Green Building Compliance Emergency Amendment Act of 2011 (D.C. Act 19-257, December 21, 2011, 58 DCR 11222).

Legislative history of Law 16-234. — Law 16-234, the "Green Building Act of 2006", was introduced in Council and assigned Bill No. 16-515, which was referred to Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 14, 2006, and December 5, 2006, respectively. Signed by the Mayor on December 28,

2006, it was assigned Act No. 16-590 and transmitted to both Houses of Congress for its review. D.C. Law 16-234 became effective on March 8, 2007.

Legislative history of Law 18-349. — Law 18-349, the “Green Building Technical Corrections, Clarification, and Revision Amendment Act of 2010”, was introduced in Council and assigned Bill No. 18-377, which was referred to the Committee Government Operations and the Environment. The Bill was adopted on first and second readings on December 7, 2010, and December 21, 2010, respectively. Signed by the

Mayor on January 19, 2011, it was assigned Act No. 18-698 and transmitted to both Houses of Congress for its review. D.C. Law 18-349 became effective on March 31, 2011.

Legislative history of Law 19-139. — For history of Law 19-139, see notes under § 6-1412.

Delegation of Authority. — Delegation of Authority-Green Building Act of 2006, see Mayor’s Order 2007-206, September 21, 2007 (55 DCR 125).

Editor’s notes. — Section 7075 of D.C. Law 17-219 repealed section 15 of D.C. Law 16-234.

§ 6-1451.02. Publicly-owned, leased, and financed buildings and projects.

(a)(1) This subsection shall apply to all new construction and substantial improvement of:

(A) Projects that are District-owned or District instrumentality-owned; and

(B) Projects where at least 15% of the total cost is District-financed or District instrumentality-financed.

(2) A nonresidential project shall:

(i) Within 2 years after the receipt of a certificate of occupancy, be verified as having fulfilled or exceeded the current edition of the LEED standard for commercial and institutional buildings, at the silver level; provided, that a public school shall be verified as having fulfilled or exceeded the current edition of the LEED standard for commercial and institutional buildings, at the certification level;

(ii) Notwithstanding sub-subparagraph (i) of this subparagraph, a public school shall be verified as having fulfilled or exceeded the current edition of the LEED standard for commercial and institutional buildings at the gold level or higher if sufficient funding for the construction or renovation is provided.

(B) If the project is new construction of 10,000 square feet or more of gross floor area, and is a building type for which Energy Star TM tools are available:

(i) Be designed to achieve 75 points on the EPA national energy performance rating system, as determined by the Energy Star TM Target Finder Tool;

(ii) Be annually benchmarked using the Energy Star TM Portfolio Manager benchmarking tool; and

(iii)(I) Make benchmark and Energy Star TM statements of energy performance available to DDOE within 60 days of being generated.

(II) Upon receipt, DDOE shall make the benchmark and Energy Star TM statements available to the public via an online database accessible through the DDOE website; and

(C) Institute building systems monitoring and maintenance accountability methods upon receipt of a certificate of occupancy.

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(3) If a residential project includes 10,000 square feet of gross floor area or more, the residential project shall:

(A) Fulfill or exceed the current edition of the Green Communities standard, or a substantially similar standard; and

(B) Submit to DCRA a copy of the standard's self-certification checklist and a verification of meeting the standard's requirements for energy efficiency, as part of the application for a certificate of occupancy.

(4) The requirements of this subsection shall apply:

(A) On or after October 1, 2007, for a District-owned or District instrumentality-owned project that was initially funded in the Fiscal Year 2008 District budget or later;

(B) On or after October 1, 2008, for a project on District-owned or District instrumentality-owned property, leased by a private entity as a result of a property disposition by lease, in Fiscal Year 2009 or later; and

(C) On or after October 1, 2008, for a privately-owned project if 15% or more of a project's total project cost was financed by the District or a District instrumentality in Fiscal Year 2009 or later.

(5) The Mayor shall, as a condition of the financing of a District-financed or District instrumentality-financed project governed by this subsection, include a penalty that will be levied upon an applicant for failure to fulfill the requirements of this chapter. The penalties may include:

(A) Prohibiting the applicant from receiving additional District or District instrumentality financing for a period of up to 5 years;

(B) Assessing a fine as set forth in § 6-1451.05(f); or

(C) Imposing an alternative penalty commensurate with the seriousness of the applicant's failure to fulfill requirements of this chapter, as determined by the Mayor.

(6) An applicant for new construction or substantial improvement of a mixed-use space shall fulfill or exceed the current edition of the LEED standard for commercial and institutional buildings at the certified level for the mixed-use space of the project. Any requirements of § 6-1451.05 shall apply to the mixed-use space of the project. For the purposes of mixed-use space in this paragraph, the term:

(A) "LEED" also includes LEED for Commercial Interiors and LEED for Retail: Commercial Interiors; and

(B) "Certificate of occupancy" refers to the first certificate of occupancy issued for a usable, habitable space at grade or above grade for the mixed-use space of the project.

(b)(1) This subsection shall apply to all tenant improvements of District-owned or District instrumentality-owned buildings.

(2) On or after October 1, 2008, all tenants of District-owned or District instrumentality-owned building space shall obtain verification that the improved building space fulfills or exceeds the current edition of the LEED standard for commercial and institutional buildings, LEED for Commercial Interiors, or LEED for Retail: Commercial Interiors, at the certification level, if:

(A) The tenant improves at least 30,000 square feet gross floor area or more;

(B) The improvements involve a comprehensive construction or alteration of partitions, electrical systems, HVAC & R, and finishes; and

(C) The building space has a certificate of occupancy for a commercial use.

(c)(1) This subsection shall apply to all District, and District instrumentality, owned or operated buildings.

(2) Beginning January 20, 2009, the District shall benchmark 10 buildings owned or operated by the District using the Energy Star™ Portfolio Manager benchmarking tool.

(3) Beginning October 22, 2009, the District shall annually benchmark all District, and District instrumentality, owned or operated buildings, using the Energy Star® Portfolio Manager benchmarking tool, if the building:

(A) Has at least 10,000 square feet of gross floor area; and

(B) Is a building type for which Energy Star™ benchmarking tools are available.

(4) Benchmark and Energy Star™ statements of energy performance for each building shall be made available to DDOE within 60 days of being generated. Upon receipt, DDOE shall make the benchmark and Energy Star™ statements available to the public via an online database accessible through the DDOE website.

(Mar. 8, 2007, D.C. Law 16-234, § 3, 54 DCR 377; Oct. 22, 2008, D.C. Law 17-250, § 501(a), 55 DCR 9225; July 27, 2010, D.C. Law 18-209, § 504(a), 57 DCR 4779; Mar. 31, 2011, D.C. Law 18-349, § 2(b), 58 DCR 724; June 5, 2012, D.C. Law 19-139, § 2(b), 59 DCR)

Effect of amendments. — D.C. Law 17-250 added subsec. (a-1).

D.C. Law 18-209, in subsec. (b)(1)(C)(iii), inserted “Notwithstanding the foregoing sentence, the District shall meet LEED for Schools certification at the Gold level or higher if sufficient funding for the construction or renovation is provided.”

D.C. Law 18-349 rewrote the section.

D.C. Law 19-139 rewrote subsec. (a)(1); in subsec. (a)(2)(A), designated the existing text as sub-subpar. (i) and added sub-subpar. (ii); added subsecs. (a)(5) and (6); and, in subsec. (b)(2), substituted “institutional buildings, LEED for Commercial Interiors, or LEED for Retail: Commercial Interiors” for “institutional buildings”.

Temporary Amendment of Section. — Section 2(a) of D.C. Law 19-71 added subsec. (a)(2)(A-i) to read as follows:

“(A-i) Notwithstanding subparagraph (A) of this paragraph, a public school shall be verified as having fulfilled or exceeded the current edition of the LEED standard for commercial and institutional buildings at the gold level or higher, if sufficient funding for the construction or renovation is provided.”

Section 4(b) of D.C. Law 19-71 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 501(a) of Clean and Affordable Energy Emergency Act of 2008 (D.C. Act 17-508, September 25, 2008, 55 DCR 10856).

For temporary (90 day) amendment of section, see § 2(1) of Green Building Technical Corrections Emergency Amendment Act of 2011 (D.C. Act 19-164, October 11, 2011, 58 DCR 8894).

For temporary (90 day) amendment of section, see § 2(b) of Green Building Compliance Emergency Amendment Act of 2011 (D.C. Act 19-257, December 21, 2011, 58 DCR 11222).

Legislative history of Law 16-234. — For Law 16-234, see notes following § 6-1451.01.

Legislative history of Law 18-209. — Law 18-209, the “Healthy Schools Act of 2010”, was introduced in Council and assigned Bill No. 18-564, which was referred to the Committee of the Whole and the Committee on Government Operations and the Environment. The Bill was adopted on first and second readings on April 20, 2010, and May 4, 2010, respectively. Signed by the Mayor on May 21, 2010, it was assigned Act No. 18-428 and transmitted to both Houses of Congress for its review. D.C. Law 18-209 became effective on July 27, 2010.

Legislative history of Law 18-349. — For

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history of Law 18-349, see notes under § 6-1451.01.

Legislative history of Law 19-139. — For history of Law 19-139, see notes under § 6-1412.

Delegation of Authority. — Delegation of Authority—Green Building Act of 2006, see Mayor's Order 2010-1, January 15, 2010 (57 DCR 641).

§ 6-1451.03. Privately-owned buildings and projects.

(a) This section shall apply to all privately-owned buildings and projects with at least 50,000 square feet of gross floor area.

(b)(1) All new construction and substantial improvement of nonresidential projects, including projects involving real property acquired by a real property disposition by sale from the District or a District instrumentality to a private entity, and projects if less than 15% of the project's total project cost was financed by the District or a District instrumentality, shall:

(A) Beginning January 1, 2009, as part of any building permit application, submit to DCRA a green building checklist documenting the green building elements to be pursued in the respective building's permit; and

(B) Be verified by an entity described in § 6-1451.04 as having fulfilled or exceeded the current edition of the LEED standard for commercial and institutional buildings at the certification level within 2 years of the receipt of a certificate of occupancy; provided, that a public school shall be verified as having fulfilled or exceeded the current edition of the LEED standard for commercial and institutional buildings at the gold level or higher if sufficient funding for the construction or renovation is provided.

(2) This subsection shall apply as of:

(A) January 1, 2010, for a project involving real property acquired by a real property disposition by sale, from the District or a District instrumentality to a private entity, that has submitted an application for the 1st building permit on or after January 1, 2010; and

(B) January 1, 2012, for a project that has submitted an application for the 1st building permit on or after January 1, 2012.

(3) The area of common space in a project shall be allocated to either residential or nonresidential square footage of a project based upon the percentage of gross floor area of the project occupied by each of the residential and nonresidential occupancies calculated after excluding the area of common space.

(4) An applicant for new construction or substantial improvement of a mixed-use space shall fulfill or exceed the current edition of the LEED standard for commercial and institutional buildings at the certified level for the nonresidential portion of the project. Any requirements set forth in section 6 shall apply to the mixed-use space of the project. For the purposes of mixed-use space in this paragraph, the term:

(A) "LEED" also includes LEED for Commercial Interiors and LEED for Retail: Commercial Interiors; and

(B) "Certificate of occupancy" refers to the first certificate of occupancy issued for a usable, habitable space at grade or above grade for the mixed-use space of the project.

(c)(1) This subsection shall apply to all buildings and projects that are of a building type for which Energy Star® tools are available.

(2)(A) The requirements for existing privately-owned buildings shall be as follows:

(i) The owner or a designee of the owner shall annually benchmark the building using the Energy Star® Portfolio Manager benchmarking tool; and

(ii)(I) Benchmark and Energy Star® statements of energy performance for each building shall be made available to DDOE by April 1 of the respective following year. In 2011 only, the scores and statements shall be made available to DDOE no later than July 1.

(II) Upon receipt, DDOE shall make the benchmark and Energy Star® statements available to the public via an online database accessible through the DDOE website, beginning with the 2nd annual benchmarking data for each building.

(B) This paragraph shall apply as of:

(i) January 1, 2010, for a building with over 200,000 square feet of gross floor area;

(ii) January 1, 2011, for a building with over 150,000 square feet of gross floor area;

(iii) January 1, 2012, for a building with over 100,000 square feet of gross floor area; and

(iv) January 1, 2013, for a building with over 50,000 square feet of gross floor area, or more.

(C) Benchmarking data required in this paragraph shall include water consumption data as incorporated in the Portfolio Manager Benchmarking Tool.

(D) A building owner or tenant who fails to timely, accurately, and completely submit the benchmarking information required by this paragraph to DDOE or to the building owner shall be assessed a penalty by DDOE of no more than \$100 for each day during which the required submission has not been made. Civil infraction fines, penalties, and fees may be imposed as alternative sanctions for such failure, pursuant to Chapter 18 of Title 2. Adjudication of an infraction shall be pursuant to Chapter 18 of Title 2.

(3) An applicant for new construction or substantial improvement of a project who submits the 1st building permit after January 1, 2012, shall, prior to construction, estimate the project's energy performance using the Energy Star® Target Finder Tool.

(Mar. 8, 2007, D.C. Law 16-234, § 4, 54 DCR 377; Oct. 22, 2008, D.C. Law 17-250, § 501(b), 55 DCR 9225; July 27, 2010, D.C. Law 18-209, § 504(b), 57 DCR 4779; Mar. 31, 2011, D.C. Law 18-331, § 2, 58 DCR 22; Mar. 31, 2011, D.C. Law 18-349, § 2(c), 58 DCR 724; June 5, 2012, D.C. Law 19-139, § 2(c), 59 DCR 2555.)

Effect of amendments. — D.C. Law 17-250 added subsecs. (a-1) and (b-1).

D.C. Law 18-209, in subsec. (b)(2)(B), inserted "Schools shall aspire to meet LEED for

Schools certification at the Gold level or higher."

D.C. Law 18-331, in subsec. (a-1)(1), substituted "April 1 of the following year, be made

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available to DDOE. In 2011 only, the scores and statements shall be made available to DDOE no later than July 1" for "January 1 of the following year, be made available to DDOE"; and added subsecs. (a-1)(3) and (c).

D.C. Law 18-349 rewrote the section.

D.C. Law 19-139, in subsec. (b)(1)(A), substituted "permit" for "construction permit"; in subsec. (b)(1)(B), inserted "; provided, that a public school shall be verified as having fulfilled or exceeded the current edition of the LEED standard for commercial and institutional buildings at the gold level or higher if sufficient funding for the construction or renovation is provided."; in subsecs. (b)(2)(A), (B), and (c)(3), substituted "first building permit" for "1st building construction permit"; added subsecs. (b)(3), (4), and (c)(2)(C), (D); and, in subsec. (c)(2)(A)(ii)(I), substituted "April 1 of the respective following year. In 2011 only, the scores and statements shall be made available to DDOE no later than July 1." for "January 1 of the respective following year."

Temporary Amendment of Section. — Section 2(b) of D.C. Law 19-71, in subsec. (b)(1)(B), added a new sentence at the end to read as follows: "Schools shall aspire to meet LEED for Schools certification at the gold level or higher."; in subsec. (c)(2)(A)(ii)(I), substituted "April 1 of the respective following year. In 2011 only, the scores and statements shall be made available to DDOE no later than July 1" for "January 1 of the respective following year"; and added subsecs. (c)(2)(C) and (D) to read as follows:

"(C) Benchmarking data required in this paragraph shall include water consumption data as incorporated in the Portfolio Manager Benchmarking Tool.

"(D) A building owner or tenant who fails to timely, accurately, and completely submit the benchmarking information required by this paragraph to DDOE or to the building owner shall be assessed a penalty by DDOE of not more than \$100 for each day during which the required submission has not been made. Civil infraction fines, penalties, and fees may be imposed as alternative sanctions for such failure, pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.01 et seq. ('Civil

Infractions Act'). Adjudication of an infraction shall be pursuant to the Civil Infractions Act."

Section 4(b) of D.C. Law 19-71 provided that the act shall expire after 225 days of its having taken effect.

Section 2(b) of D.C. Law 19-99 added subsec. (b)(3) to read as follows:

"(b)(3) For the purposes of this section, the term 'LEED' means LEED for New Construction, Core & Shell, Schools, or Retail."

Section 4(b) of D.C. Law 19-99 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 501(b) of Clean and Affordable Energy Emergency Act of 2008 (D.C. Act 17-508, September 25, 2008, 55 DCR 10856).

For temporary (90 day) amendment of section, see § 2(b) of Green Building Technical Corrections Emergency Amendment Act of 2011 (D.C. Act 19-164, October 11, 2011, 58 DCR 8894).

For temporary (90 day) amendment of section, see § 2(c) of Green Building Compliance Emergency Amendment Act of 2011 (D.C. Act 19-257, December 21, 2011, 58 DCR 11222).

Legislative history of Law 16-234. — For Law 16-234, see notes following § 6-1451.01.

Legislative history of Law 17-250. — For Law 17-250, see notes following § 6-1451.02.

Legislative history of Law 18-209. — For Law 18-209, see notes following § 6-1451.02.

Legislative history of Law 18-331. — Law 18-331, the "Sustainable Energy Utility Amendment Act of 2010", was introduced in Council and assigned Bill No. 18-932, which was referred to the Committee on Government Operations and the Environment. The Bill was adopted on first and second readings on November 23, 2010, and December 7, 2010, respectively. Signed by the Mayor on December 28, 2010, it was assigned Act No. 18-653 and transmitted to both Houses of Congress for its review. D.C. Law 18-331 became effective on March 31, 2011.

Legislative history of Law 18-349. — For history of Law 18-349, see notes under § 6-1451.01.

Legislative history of Law 19-139. — For history of Law 19-139, see notes under § 6-1412.

§ 6-1451.04. Compliance review.

(a) The Mayor shall verify compliance with the requirements of this chapter as specified in §§ 6-1451.02 and 6-1451.03 through:

(1) An agency of the District government; or

(2) Third-party entities which meet criteria to be established by the Mayor by rulemaking within 180 days of March 8, 2007.

(b) The Mayor shall review the qualifications of each third-party entity

approved under subsection (a)(2) of this section at least every 2 years to determine if the entity shall remain eligible to conduct the verifications required in §§ 6-1451.02 and 6-1451.03.

(c) Notwithstanding Chapter 5 of Title 2 [§ 2-501 et seq.], for the purposes of establishing compliance with §§ 6-1451.02 and 6-1451.03, verification of a project shall be based upon the standards in effect one year prior to the applicant's first of the following interactions with the District:

(A) The approval of a land disposition agreement;

(B) The submission of an application to the Board of Zoning Adjustment for a variance or special exception relief;

(C) The submission of an application to the Zoning Commission for a planned unit development or other approval requiring Zoning Commission action;

(D) The submission of an application to the Historic Preservation Review Board or the Mayor's Agent for the Historic Preservation Review Board; or

(E) Other substantial land-use interactions with the District as defined through rulemaking by the Mayor.

(d) Verification that a project has complied with the requirements of this chapter shall not relieve an applicant of any obligations or liabilities otherwise existing under law and shall not relieve the District of its obligation to review all construction documents in the manner otherwise prescribed by law.

(e) An applicant may apply for verification of a project by the Mayor at any time.

(f) Verification decisions by the Mayor shall be considered official interpretations of the requirements of this chapter and may be appealed by an applicant pursuant to subsection 112.1 of Title 12 of the District of Columbia Municipal Regulations (12 DCMR § 112.1) [CDCR 12A-112].

(Mar. 8, 2007, D.C. Law 16-234, § 5, 54 DCR 377; Mar. 25, 2009, D.C. Law 17-353, § 154, 56 DCR 1117; June 5, 2012, D.C. Law 19-139, § 2(d), 59 DCR 2555.)

Effect of amendments. — D.C. Law 17-353 validated a previously made technical correction in subsec. (f).

D.C. Law 19-139 rewrote subsec. (c), which formerly read:

“(c) Notwithstanding Chapter 5 of Title 2, for the purposes of establishing compliance with standards in §§ 6-1451.02 and 6-1451.03, verification of a project shall be based upon the standards in effect 6 months prior to the sub-

mission of the first construction permit application.”

Legislative history of Law 16-234. — For Law 16-234, see notes following § 6-1451.01.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 6-201.

Legislative history of Law 19-139. — For history of Law 19-139, see notes under § 6-1412.

§ 6-1451.05. Financial security.

(a) Beginning January 1, 2012, an applicant governed by § 6-1451.03(a) shall provide a financial security, which shall be due prior to receipt of a certificate of occupancy.

(b)(1) The financial security requirement of subsection (a) of this section may be fulfilled by:

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(A) Evidence of cash deposited in an escrow account in a financial institution in the District in the name of the licensee and the District;

(B) An irrevocable letter of credit from a financial institution authorized to do business in the District;

(C) A bond secured by the applicant to ensure compliance with this section; or

(D) A binding pledge that within 2 years of receipt of the certificate of occupancy the applicant will fulfill or exceed the current edition of the LEED standard for commercial and institutional buildings at the certified level.

(2)(A) A binding pledge pursuant to paragraph (1)(D) of this subsection shall be recorded as a covenant in the land records of the District between the applicant and the District in a form that is satisfactory to the District's Attorney General or the Attorney General's delegate.

(B) The covenant shall bind the applicant and any successors in title to pay any fines levied pursuant to this section.

(c) If, within 2 years of receipt of the certificate of occupancy, the project provides evidence that it has fulfilled or exceeded the current edition of the LEED standard for commercial and institutional buildings at the certified level, a financial security previously provided by the applicant in the form of cash, an irrevocable letter of credit, or a bond shall be returned to the applicant.

(d) If, within 2 years of receipt of the certificate of occupancy, the project does not provide evidence that it has fulfilled or exceeded the current edition of the LEED standard for commercial and institutional buildings at the certified level, the Mayor shall, as applicable, either:

(1) Draw down on a financial security provided in the form of cash, an irrevocable letter of credit, or a bond, in whole, or in part; or

(2) Levy a fine against an applicant that provided a financial security in the form of a binding pledge as set forth in subsection (f) of this subsection.

(e) A financial security in the form of cash, an irrevocable letter of credit, or a bond shall be calculated by square foot as set forth in subsection (f) of this section but shall be discounted by 20% of the amount of the fine described in subsection (f) of this section.

(f) A fine issued pursuant to subsection (d)(2) of this section shall be calculated as follows:

(1) In the amount of \$7.50 per square foot of gross floor space if the project is less than 100,000 square feet of gross floor space.

(2) In the amount of \$10 per square foot, if the project is at least 100,000 square feet of gross floor space.

(3) Beginning 4 years after receipt of the certificate of occupancy, the applicant shall pay a monthly fine of \$0.02 per square foot to the District for failure to provide evidence that it has fulfilled or exceeded either the current edition of the LEED standard for commercial and institutional buildings at the certified level or the current edition of the LEED standard for Existing Buildings: Operations & Maintenance at the certified level. The monthly fines shall accumulate but shall be assessed annually.

(4) The fine described in paragraphs (1) and (2) of this subsection shall not

exceed \$3 million; provided, that an annual fine issued pursuant to paragraph (3) of this subsection shall not count toward the \$3 million limit.

(g) The Mayor, for good cause, may issue time extensions to a project; provided, that the Mayor shall not grant more than 3, one-year extensions.

(h) Fines issued under this section shall be civil penalties.

(i) Substantial improvements shall be subject to the requirements of this section; provided, that only square feet included in a substantial improvement project shall be calculated for the purposes of a fine.

(j) The financial security option provided in subsection (b)(1)(C) of this section shall become effective upon the issuance of rules by the Mayor.

(k) Any payment made to the District for failure to meet the standards required by §§ 6-1451.02 and 6-1451.03 shall be deposited in the Green Building Fund.

(Mar. 8, 2007, D.C. Law 16-234, § 6, 54 DCR 377; Mar. 31, 2011, D.C. Law 18-349, § 2(d), 58 DCR 724; June 5, 2012, D.C. Law 19-139, § 2(e), 59 DCR 2555.)

Effect of amendments. — D.C. Law 18-349 substituted “bond” for “performance bond” throughout the section; in the section heading, substituted “Bond requirements” for “Performance bond”; rewrote subsec. (b); in subsec. (g), substituted “standards required by §§ 6-1451.03 and 6-1451.06” for “verification requirements described in §§ 6-1451.02 and 6-1451.03”. Prior to amendment, subsec. (b) read as follows: “(b) On or before January 1, 2012, all applicants for construction governed by § 6-1451.03 shall provide a performance bond, which shall be due and payable prior to receipt of a certificate of occupancy.”

D.C. Law 19-139 rewrote the section, which formerly read:

“(a) A commercial applicant who applies for an incentive described in § 6-1451.06 shall provide a bond which shall be due and payable upon approval of the first building construction permit application.

“(b) All applicants governed by § 6-1451.03 shall provide a bond, which shall be due and payable prior to receipt of a certificate of occupancy, according to the following schedule:

“(1) On or after January 1, 2010, for an applicant governed by § 6-1451.03(b)(2)(A); and

“(2) On or after January 1, 2012, for an applicant governed by § 6-1451.03(b)(2)(B).

“(c) For the purpose of compliance with subsections (a) and (b) of this section, in lieu of the bond required by this section, the Mayor may accept an irrevocable letter of credit from a financial institution authorized to do business in the District or evidence of cash deposited in an escrow account in a financial institution in the District in the name of the licensee and the District. The letter of credit or escrow account

shall be in the amounts required by subsection (d) of this section.

“(d) The amount of the required bond under subsection (a) of this section shall be 1% of the incentive provided.

“(e) The amount of the required bond under subsection (b) of this section shall be:

“(1) For a project not exceeding 150,000 square feet of gross floor area, 2% of the total cost of the building;

“(2) For a project from 150,001 to 250,000 square feet of gross floor area, 3% of the total cost of the building; and.

“(3) For a project exceeding 250,000 square feet building of gross floor area, 4% of the total cost of the building.

“(f) The maximum amount of a bond shall be \$3 million.

“(g) All or part of the bond shall be forfeited to the District and deposited in the Green Building Fund if the building fails to meet the standards required by §§ 6-1451.03 and 6-1451.06.

“(h) The District shall draw down on the bond funds if the required green building verification is not provided within 2 years after receiving the first certificate of occupancy.

“(i) The Mayor shall promulgate rules to establish additional requirements for the drawing down or return of the bond.”

Temporary Amendment of Section. — Section 2(c) of D.C. Law 19-99 rewrote the section to read as follows:

“Sec. 6. Financial security.

“(a) Beginning January 1, 2012, an applicant governed by section 4(a) shall provide a financial security, which shall be due and payable prior to receipt of a certificate of occupancy.

“(b)(1) The financial security requirement of subsection (a) of this section may be fulfilled by:

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“(A) Evidence of cash deposited in an escrow account in a financial institution in the District in the name of the licensee and the District;

“(B) An irrevocable letter of credit from a financial institution authorized to do business in the District;

“(C) A bond secured by the applicant to ensure compliance with this section; or

“(D) A binding pledge that within 2 years of receipt of the certificate of occupancy the applicant will fulfill or exceed the current edition of the LEED standard for commercial and institutional buildings at the certified level.

“(2)(A) The binding pledge described in paragraph (1)(D) of this subsection shall be recorded as a covenant in the land records of the District between the applicant and the District in a form that is satisfactory to the District’s Attorney General or his or her delegate.

“(B) The covenant shall bind the applicant and any successors in title to pay any fines levied pursuant to this section.

“(c) If within 2 years of receipt of the certificate of occupancy the project provides evidence that it has fulfilled or exceeded the current edition of the LEED standard for commercial and institutional buildings at the certified level, a financial security previously provided by the applicant in the form of cash, an irrevocable letter of credit, or a bond shall be returned to the applicant.

“(d) If within 2 years of receipt of the certificate of occupancy, the project does not provide evidence that it has fulfilled or exceeded the current edition of the LEED standard for commercial and institutional buildings at the certified level, the Mayor shall:

“(1) Draw down on a financial security provided in the form of cash, an irrevocable letter of credit, or a bond, in whole, or in part, as determined by rulemaking; or

“(2) Levy a fine against an applicant that provided a financial security in the form of a binding pledge as set forth in subsection (f) of this section.

“(e) A financial security in the form of cash, an irrevocable letter of credit, or a bond shall be calculated by square foot as set forth in subsection (f) but shall be discounted by 20% of the amount of the fine described in subsection (f) of this section.

“(f) A fine issued pursuant to subsection (d)(2) of this section shall be calculated as follows:

“(1) In the amount of \$7.50 per square foot of gross floor space if the project is less than 100,000 square feet of gross floor space.

“(2) In the amount of \$10 per square foot, if the project is at least 100,000 square feet of gross floor space.

“(3) Beginning 4 years after receipt of the certificate of occupancy, the applicant shall pay a monthly fine of \$0.02 per square foot to the District for failure to provide evidence that it has fulfilled or exceeded either the current edition of the LEED standard for commercial and institutional buildings at the certified level or the current edition of the LEED standard for existing commercial and institutional buildings at the certified level. The monthly fines shall accumulate but shall be assessed annually.

“(4) The fine described in paragraphs (1) and (2) of this subsection shall not exceed \$3 million; provided, that an annual fine issued pursuant to subsection (f)(3) of this section shall not count toward the \$3 million limit.

“(5) The Mayor may reduce any or all of the fines for good cause.

“(g) The Mayor may, for good cause, issue time extensions to a project; provided, that the Mayor shall not grant more than 3, one-year extensions.

“(h) Fines issued under this section shall be civil penalties.

“(i) Substantial improvements shall be subject to the requirements of this section; provided, that only square feet included in a substantial improvement project shall be calculated for the purposes of a fine.

“(j) The financial security option provided in subsection (b)(1)(C) of this section shall become effective upon the issuance of rules by the Mayor.

“(k) Any payment made to the District for failure to meet the standards required by sections 4 and 7 shall be deposited in the Green Building Fund.

“(l) For purposes of this section, ‘LEED standard for commercial and institutional buildings’ means LEED for New Construction, Core & Shell, Schools, or Retail.”

Section 4(b) of D.C. Law 19-99 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(d) of Green Building Compliance Emergency Amendment Act of 2011 (D.C. Act 19-257, December 21, 2011, 58 DCR 11222).

Legislative history of Law 16-234. — For Law 16-234, see notes following § 6-1451.01.

Legislative history of Law 18-349. — For history of Law 18-349, see notes under § 6-1451.01.

Legislative history of Law 19-139. — For history of Law 19-139, see notes under § 6-1412.

§ 6-1451.06. Incentives. [Repealed].

Repealed.

(Mar. 8, 2007, D.C. Law 16-234, § 7, 54 DCR 377; Mar. 31, 2011, D.C. Law 18-349, § 2(e), 58 DCR 724; June 5, 2012, D.C. Law 19-139, § 2(e), 59 DCR 2555.)

Legislative history of Law 16-234. — For Law 16-234, see notes following § 6-1451.01.

Legislative history of Law 18-349. — For history of Law 18-349, see notes under § 6-1451.01.

Legislative history of Law 19-139. — For history of Law 19-139, see notes under § 6-1412.

§ 6-1451.07. Green Building Fund.

(a) There is established a fund designated as the Green Building Fund, which shall be separate from the General Fund of the District of Columbia. All additional monies obtained pursuant to §§ 6-1451.05 and 6-1451.08, and all interest earned on those funds, shall be deposited into the Fund without regard to fiscal year limitation pursuant to an act of Congress, and used solely to pay the costs of operating and maintaining the Fund and for the purposes stated in subsection (c) of this section. All funds, interest, and other amounts deposited into the Fund shall not be transferred or revert to the General Fund of the District of Columbia at the end of any fiscal year or at any other time, but shall continually be available for the uses and purposes set forth in this section, subject to authorization by Congress in an appropriations act.

(b) The Mayor shall administer the monies deposited in the Fund.

(c)(1) The purpose of the Fund is to streamline administrative green building processes, improve sustainability performance outcomes, build capacity of development and administrative oversight professionals in green building skills and knowledge, institutionalize innovation, overcome barriers to achieving high-performance buildings, and continuously promote the sustainability of green building practices in the District.

(2) [The] Fund shall be used for the following:

(A) costs for at least 3 full-time employees at DCRA, or elsewhere as assigned by the Mayor, whose primary job duties are devoted to technical assistance, plan review, and inspections and monitoring of green buildings;

(B) Additional staff and operating costs to provide training, technical assistance, plan review, inspections and monitoring of green buildings, and green codes development;

(C) Research and development of green building practices;

(D) Education, training, outreach, and other market transformation initiatives; and

(E) Seed support for demonstration projects, their evaluation, and when successful, their institutionalization.

(3) The Mayor may receive and administer grants for the purpose of carrying out the goals of this chapter.

(Mar. 8, 2007, D.C. Law 16-234, § 8, 54 DCR 377; June 5, 2012, D.C. Law 19-139, § 2(f), 59 DCR 2555.)

Effect of amendments. — D.C. Law 19-139 rewrote subsec. (c), which formerly read:

“(c) The Fund shall be used as follows:”

“(1) Staffing and operating costs to provide

§ 6-1451.08 HOUSING & BUILDING RESTRICTIONS & REGULATIONS

technical assistance, plan review, and inspections and monitoring of green buildings;

“(2) Education, training and outreach to the public and private sectors on green building practices; and

“(3) Incentive funding for private buildings as provided for in § 6-1451.06.”

Legislative history of Law 16-234. — For Law 16-234, see notes following § 6-1451.01.

Legislative history of Law 19-139. — For history of Law 19-139, see notes under § 6-1412.

§ 6-1451.08. Green building fee.

(a) A green building fee is established to fund the implementation of this chapter and the Green Building Fund.

(b) Upon March 8, 2007, the green building fee shall be established by increasing the building permit fees in effect at the time in accordance with the following schedule of additional fees:

(1) New construction — an additional \$0.0020 per square foot.

(2) Alterations and repairs exceeding \$1,000 but not exceeding \$1 million — an additional 0.13% of construction value; and

(3) Alterations and repairs exceeding \$1 million — an additional 0.065% of construction value.

(Mar. 8, 2007, D.C. Law 16-234, § 9, 54 DCR 377; June 5, 2012, D.C. Law 19-139, § 2(g), 59 DCR 2555.)

Effect of amendments. — D.C. Law 19-139, in subsec. (b), substituted “building permit” for “building construction permit”.

Legislative history of Law 16-234. — For Law 16-234, see notes following § 6-1451.01.

Legislative history of Law 19-139. — For history of Law 19-139, see notes under § 6-1412.

§ 6-1451.09. Establishment of the Green Building Advisory Council.

(a) DDOE shall provide the central coordination and technical assistance to District agencies and instrumentalities in the implementation of the provisions of this chapter.

(b) Within 90 days after March 8, 2007, the Mayor shall establish a Green Building Advisory Council to monitor the District’s compliance with the requirements of this chapter and to make policy recommendations designed to continually improve and update the chapter.

(c)(1) The GBAC shall consist of the following 13 members:

(A) The Director of DDOE, or the Director’s designee;

(B) The Director of the Office of Planning, or the Director’s designee;

(C) The Director of the Department of General Services, or the Director’s designee;

(D) The Director of the Department of Consumer and Regulatory Affairs, or the Director’s designee;

(E) The Director of the Department of Housing and Community Development, or the Director’s designee;

(F) Six members appointed by the Mayor comprised in equal number of representatives from the private and nonprofit sectors;

(G) One member appointed by the chairperson of the committee of the

Council that oversees the building permit function in the District of Columbia; and

(H) One member appointed by the chairperson of the Committee of the Council that oversees DDOE.

(2) Members of the GBAC who are not ex officio members shall have expertise in building construction, development, engineering, natural resources conservation, energy conservation, green building practices, environmental protection, environmental law, or other similar green building expertise.

(3) The Chairperson of the GBAC shall be the Director of DDOE.

(4) All members of the GBAC shall either work in, or be residents of the District, and shall serve without compensation.

(5) The members shall serve a 2-year term.

(6) A member appointed to fill a vacancy or after a term has begun, shall serve only for the remainder of the term or until a successor is appointed.

(d) The GBAC shall advise the Mayor on:

(1) The development, adoption, and revisions of this chapter, including suggestions for additional incentives to promote green building practices;

(2) The evaluation of the effectiveness of the District's green building policies and their impact on the District's environmental health, including the relation of the development of the District's green building policies to the specific environmental challenges facing the District;

(3) The green building practices to be included in the triennial revisions of the Construction Codes; and

(4) The promotion of green building education, including educating relevant District employees, the building community, and the public regarding the benefits and techniques of high-performance building standards.

(e) The GBAC shall meet at least 6 times each year.

(f) GBAC shall issue an annual report of its recommendations. The report shall include recommended updates of green building standards, building systems monitoring and data compiled from District-owned or District instrumentality-owned and operated buildings, and an analysis of the building projects exempted by the Mayor under § 6-1451.10. The report shall be distributed to all members of the Council and the Mayor and made available to the general public within 30 days after its issuance.

(g) The Mayor shall provide GBAC with the following to be included in the annual report required by subsection (f) of this section:

(1) An accounting of funds deposited into the Green Building Fund during the past fiscal year, separated by category;

(2) An accounting of funds spent from the Green Building Fund during the past fiscal year, referencing that year's annual green plan's goals; and

(3) A 2-year District Green Building Plan updated annually, with goals and associated projections of expenditures for the upcoming fiscal year, produced in consultation with the GBAC.

(Mar. 8, 2007, D.C. Law 16-234, § 10, 54 DCR 377; Mar. 31, 2011, D.C. Law 18-349, § 2(f), 58 DCR 724; June 5, 2012, D.C. Law 19-139, § 2(h), 59 DCR 2555.)

§ 6-1451.10 HOUSING & BUILDING RESTRICTIONS & REGULATIONS

Effect of amendments. — D.C. Law 18-349 substituted “DDOE” for “The Department of the Environment” or “the Department of the Environment”.

D.C. Law 19-139, in subsec. (c)(1)(C), substituted “Department of General Services” for “Office of Property Management”; in subsec. (c)(1)(G), substituted “building permit” for “building construction permit”; and added subsec. (g).

Legislative history of Law 16-234. — For Law 16-234, see notes following § 6-1451.01.

Legislative history of Law 18-349. — For history of Law 18-349, see notes under § 6-1451.01.

Legislative history of Law 19-139. — For history of Law 19-139, see notes under § 6-1412.

§ 6-1451.10. Exemptions and extensions.

(a)(1) The Mayor may, in unusual circumstances and only upon a showing of good cause, grant an exemption from any of the requirements of this chapter based on:

(A) Substantial evidence of a practical infeasibility or hardship of meeting a required green building standard;

(B) A determination that the public interest would not be served by complying with such requirements; or

(C) Other compelling circumstances as determined by the Mayor by rulemaking.

(2) The burden shall be on the applicant to show circumstances to establish hardship or infeasibility under this section.

(3) If the Mayor determines that the required verification requirement is not practicable for a project, the Mayor shall determine if another green building standard is practicable before exempting the project from all green building requirements.

(4) The Mayor shall promulgate rules to establish requirements for the exemption process within 180 days of March 8, 2007.

(b) Notwithstanding any other provision of this chapter, construction encompassed by building permits applied for within 6 months of March 8, 2007, shall be exempt from the verification requirements of this chapter.

(c) Notwithstanding any other provision of this chapter, construction encompassed by a contract for a disposition agreement with the District or an instrumentality of the District for a property disposition for which a request for proposals was released prior to March 8, 2007, shall be exempt from the relevant current edition of the LEED standard for commercial and institutional buildings verification requirements, unless the disposition agreement is executed more than 12 months after March 8, 2007.

(d) Notwithstanding any other provision of this chapter, the Mayor, upon a finding of reasonable grounds, may extend the period for green building verifications required in §§ 6-1451.02 and 6-1451.03, for 3 successive 4-month periods.

(Mar. 8, 2007, D.C. Law 16-234, § 11, 54 DCR 377; Mar. 31, 2011, D.C. Law 18-349, § 2(g), 58 DCR 724; June 5, 2012, D.C. Law 19-139, § 2(i), 59 DCR 2555.)

Effect of amendments. — D.C. Law 18-349, in subsec. (c), substituted “current edition of the LEED standard for commercial and institutional buildings” for “LEED-NC 2.2, LEED-CI 2.0, or LEED-CS 2.0”.

D.C. Law 19-139, in subsec. (b), substituted “building permit” for “building construction permit”.

Legislative history of Law 16-234. — For Law 16-234, see notes following § 6-1451.01.

Legislative history of Law 18-349. — For history of Law 18-349, see notes under § 6-1451.01.

Legislative history of Law 19-139. — For history of Law 19-139, see notes under § 6-1412.

§ 6-1451.11. Rules.

(a) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], may issue rules to implement the provisions of this chapter.

(b) The Mayor may issue proposed rules to adopt another rating system, in whole or in part. Proposed rules to adopt another rating system shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed disapproved.

(c) Notwithstanding the requirements of D.C. Code § 2-552(c), where the Mayor chooses to adopt a LEED or Green Communities standard as the District’s standard under this chapter, DDOE may do so by incorporating the LEED or Green Communities standard by reference in a Notice of Intent to take rulemaking action. When incorporating the LEED or Green Communities standard by reference, the notice shall include a specific indication of how and where a paper or electronic copy of such document may be inspected or obtained. Any amendments, supplements, or future editions to the LEED or Green Communities Standard shall be deemed to be included in the District’s standard; provided, that DDOE shall annually issue a Notice of Intent to adopt any amendments, supplements, or future editions to the LEED or Green Communities, in whole, or in part, or announce an intent to adopt a different standard.

(Mar. 8, 2007, D.C. Law 16-234, § 12, 54 DCR 377; June 5, 2012, D.C. Law 19-139, § 2(j), 59 DCR 2555.)

Effect of amendments. — D.C. Law 19-139 rewrote the section, which formerly read:

“(a) Within 180 days of March 8, 2007, the Mayor shall promulgate rules to implement this chapter. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

“(b) The Mayor may issue proposed rules to adopt future amendments, supplements, and editions of the LEED rating system, or any other rating system, in whole or in part. The proposed rules shall be submitted to the Coun-

cil for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.”

Legislative history of Law 16-234. — For Law 16-234, see notes following § 6-1451.01.

Legislative history of Law 19-139. — For history of Law 19-139, see notes under § 6-1412.

Delegation of Authority. — Delegation of Authority—Green Building Act of 2006, see Mayor’s Order 2010-1, January 15, 2010 (57 DCR 641).

CHAPTER 15. ECONOMIC DEVELOPMENT ZONE INCENTIVES.

| Sec. | | Sec. | |
|---------|---|---------|--|
| 6-1501. | Establishment of economic development zones. | 6-1504. | Tax incentives for businesses in economic development zones. |
| 6-1502. | Requirements for new economic development zones. | 6-1505. | Application. |
| 6-1503. | Tax and other development incentives for real property in economic development zones. | 6-1506. | Mayor authorized to issue rules. |

§ 6-1501. Establishment of economic development zones.

The Council establishes the following economic development zones, which shall be eligible for tax and other development incentives:

(1) The Alabama Avenue economic development zone, which is bordered on the north by the east side of Fort Stanton Park, S.E., and Suitland Parkway, S.E., and the northern property line of St. Elizabeths Hospital and Alabama Avenue, S.E., on the south by Southern Avenue, S.E., on the northeast along Fort Baker to 28th Street, S.E., south on 28th Street to Denver Street, S.E., south on Denver Street, S.E., to Naylor Road, S.E., and southeast on Naylor Road, S.E., to Southern Avenue, S.E., and on the west by South Capital Street, S.E., as designated in Mayor's Order 86-193, dated October 27, 1986 (33 DCR 7798);

(2) The D.C. Village economic development zone, which is bordered by I-295 on the west and south, Martin Luther King, Jr., Avenue, S.W., on the east, and Laboratory Road, S.W., on the North, as designated in Mayor's Order 86-193, dated October 27, 1986 (33 DCR 7798);

(3) The Anacostia economic development zone, from the west span of the 11th Street Bridge, south to Martin Luther King, Jr. Avenue, S.E., and S Street, S.E., east on S Street, S.E., to Naylor Road, S.E., south to Altamont Place, S.E., south to Good Hope Road, S.E., south along the west boundary of Fort Stanton Park to Suitland Parkway, southwest along the north side of Suitland Parkway, S.E., crossing Suitland Parkway, S.E., at Robinson Place, S.E., northwest along the north property-line of Saint Elizabeths Hospital to the start of the property line of Barry Farms, then to that portion of the west campus of Saint Elizabeths Hospital that includes approximately 40 acres adjacent to Barry Farms on the north property line, including the area in and around the Point; and adjacent to the I-295 expressway right of way on the south property line, to the west property line of Saint Elizabeths Hospital, south to the southern property line of Saint Elizabeths Hospital, east to Milwaukee Place, S.E., southeast to Martin Luther King, Jr., Avenue, S.E., south to Portland Street, S.E., west to South Capitol Street, S.E., north to Anacostia Drive, S.E., east to the west span of the 11th Street Bridge, provided that the inclusion of the approximately 40 acre portion of St. Elizabeths Hospital in the Anacostia economic development zone shall not be construed to affect in any manner the preparation and implementation of the master plan provided for by § 44-907, nor shall it be construed to in any way interfere with the policy set forth in § 2(3)(L) of the Final Mental Health System Implementation Plan Comment Resolution of 1986 (Res. 6-950; 34 DCR 179); and

(4) Any other economic development zone within the District of Columbia that is recommended by the Mayor pursuant to § 6-1502 and approved by the Council, by resolution.

(Oct. 20, 1988, D.C. Law 7-177, § 2, 35 DCR 6158.)

Section references. — This section is referred to in §§ 2-218.02 and 47-3502.

Prior Codifications. — 1981 Ed., § 5-1401.

Legislative history of Law 7-177. — Law 7-177, the “Economic Development Zone Incentives Amendment Act of 1988,” was introduced in Council and assigned Bill No. 7-208, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on June 28, 1988 and July 12, 1988, respectively. Signed by the Mayor on August 2, 1988, it was assigned Act No. 7-237 and transmitted to both Houses of Congress for its review.

Delegation of Authority. — Delegation of authority under the Economic Development Zones Incentives Amendment Act of 1988, D.C.

Law 7-177, see Mayor’s Order 90-161, October 31, 1990.

Mayor’s Orders. — Establishment of the Development Zones Administration: See Mayor’s Order 90-195, December 13, 1990.

Editor’s notes. — Good Hope Marketplace Real Property Tax Abatement Qualification Resolution of 1996: Pursuant to Resolution 11-290, effective April 16, 1996, Council approved the qualification of Safeway Stores, Inc.’s Good Hope Marketplace project at 2845 Alabama Avenue, S.E., which is located in the Alabama Avenue Development Zone, as described in the Economic Development Zone Incentive Amendment Act of 1988, for an abatement of real property taxes pursuant to that act.

§ 6-1502. Requirements for new economic development zones.

(a) The Mayor may recommend as an economic development zone eligible for tax and other development incentives any area within the District of Columbia in which exists pervasive poverty, unemployment, or general economic distress as evidenced by 1 or more of the following factors:

(1) The unemployment rate of the area is equal to at least 150% of the annual average unemployment rate in the District of Columbia for the immediately preceding calendar year, as determined by the District of Columbia Department of Employment Services.

(2) The poverty rate for families in the area is at least 20%, as determined by the United States Census Bureau.

(3) The income of at least 70% of the residents of the area is not more than 80% of the median income of residents of the District of Columbia, as determined by the United States Census Bureau.

(4) The population of the area has decreased at least 20% between the 2 most recent decennial census dates, as determined by the United States Census Bureau.

(b) Before recommending any area as an economic development zone, the Mayor shall make the following findings:

(1) That commercial or industrial development is significantly lacking in the area, but that there is a likely prospect of development if the incentives established by this chapter are available; and

(2) That there is a lack of owner-occupied housing in the area.

(c) Before recommending any area as an economic development zone, the Mayor shall also consider the following factors:

(1) The degree to which the residents of the area may benefit from the job opportunities of an economic development zone;

- (2) The strength of neighborhood support for development efforts; and
- (3) The level of private sector commitments to an economic development zone.

(Oct. 20, 1988, D.C. Law 7-177, § 3, 35 DCR 6158.)

Section references. — This section is referred to in § 6-1501.

Prior Codifications. — 1981 Ed., § 5-1402.

Legislative history of Law 7-177. — For legislative history of D.C. Law 7-177, see Historical and Statutory Notes following § 6-1501.

§ 6-1503. Tax and other development incentives for real property in economic development zones.

(a) Any improved real property located within an economic development zone shall be qualified for tax and other development incentives if:

- (1) The qualification is recommended by the Mayor and approved by the Council, by resolution;
- (2) The real property is classified as Class 3 or Class 4 real property under § 47-813;
- (3) The real property is used in conformity with the zoning regulations; and

(4)(A) Rehabilitation of the real property begins after October 20, 1988, and the actual costs of the rehabilitation of the property exceed 50% of the value of the property, as assessed by the Department of Finance and Revenue for the tax year ending immediately prior to commencement of the rehabilitation; or

(B) Construction on the real property begins after October 20, 1988.

(b) The resolution approving the qualification for tax and other development incentives pursuant to subsection (a)(1) of this section shall:

- (1) Identify the qualified real property by lot and square;
- (2) Identify the owner or owners of the qualified real property;
- (3) Identify each tax or charge to be reduced, deferred, or forgiven;
- (4) State the applicable tax year or tax period for each tax or charge to be reduced, deferred, or forgiven; and
- (5) State the dollar amount of each tax or charge reduction, deferral, or forgiveness.

(c) The following tax and other development incentives shall be available to the owner of qualified real property:

- (1) A reduction in real property taxes as provided in § 47-815(f);
- (2) Deferral or forgiveness of any real property tax owed as provided in § 436a of the District of Columbia Real Property Tax Revision Act of 1974, approved September 3, 1974 (88 Stat. 1051);
- (3) Deferral or forgiveness of any special assessment owed as provided in § 2a of An Act Relating to the levying and collecting of taxes and assessments, and for other purposes, approved June 25, 1938 (52 Stat. 1198);
- (4) Deferral or forgiveness of any cost or fee assessed to correct any condition that exists on real property in violation of law as provided in § 6-711.01(e); and

(5) Deferral or forgiveness of any water or sanitary sewer charges due as provided in §§ 34-2407.02 and 34-2110.

(Oct. 20, 1988, D.C. Law 7-177, § 4, 35 DCR 6158.)

Cross references. — Deferral of costs or fees by mayor, see § 42-3131.01.

Property tax, deferral or forgiveness, see § 47-846.01.

Sanitary sewer service charges, deferral or forgiveness, see § 34-2110.

Special assessments, deferral or forgiveness, see § 47-1202.01.

Submission and publication of proposed rates and certain assessed values, see § 47-815.

Water and sanitary sewer service charges, deferral or forgiveness, see § 34-2407.02.

Prior Codifications. — 1981 Ed., § 5-1403.

Legislative history of Law 7-177. — For legislative history of D.C. Law 7-177, see Historical and Statutory Notes following § 6-1501.

References in text. — The “District of Columbia Real Property Tax Revision Act of 1974”, referred to in subsection (c)(2), is 88 Stat. 1051.

The “An Act Relating to the levying and collecting of taxes and assessments”, referred to in subsection (c)(3), is 52 Stat. 1198.

Transfer of Functions. — Pursuant to the Office of the Chief Financial Officer’s “Notice of Public Interest” published in the April 18, 1997, issue of the District of Columbia Register (44 DCR 2345) the Office of Tax and Revenue assumed all of the duties and functions previously performed by the Department of Finance and Revenue, as set forth in Commissioner’s Order 69-96, dated March 7, 1969. This action was made effective January 22, 1997, nunc pro tunc.

Editor’s notes. — King Office Limited Partnership Real Property Tax Abatement Forgiveness Qualification disapproval Resolution of 1996: Pursuant to Resolution 11-565, effective November 7, 1996, Council disapproved the Mayor’s recommendation that real property taxes be forgiven and abated for the King Office Limited Partnership’s newly constructed office building at 3720 Martin Luther King, Jr., Avenue, S.E., Washington, D.C., pursuant to the Economic Development Zone Incentives Amendment Act of 1988.

§ 6-1504. Tax incentives for businesses in economic development zones.

(a) Any incorporated or unincorporated business entity that has a place of business located within an economic development zone shall be qualified for tax incentives if:

(1) The qualification is recommended by the Mayor and approved by the Council, by resolution;

(2) The business entity has entered an employment agreement with the District of Columbia pursuant to § 2-219.01; and

(3) The business entity is subject to franchise taxes under either § 47-1807.01 et seq. or § 47-1808.01 et seq.

(b) The resolution approving the qualification for tax incentives pursuant to subsection (a)(1) of this section shall:

(1) Identify the qualified incorporated or unincorporated business entity;

(2) Identify each franchise tax credit to be granted; and

(3) Include an estimate of the annual dollar value of each franchise tax credit.

(c) For purposes of an incorporated or unincorporated business entity’s eligibility for the tax credits provided under §§ 47-1807.04, 47-1807.05, and 47-1808.04, the Mayor shall certify any employee who is a resident of the District of Columbia who received an annual income equal to or less than 150% of the lower living standard income level, as that term is defined in 29 U.S.C. § 1503, in the 12 months immediately preceding the commencement of his

employment by the qualified incorporated or unincorporated business and is not a qualified summer youth as defined in 26 U.S.C. § 51.

(d) The following tax incentives shall be available to a qualified incorporated or unincorporated business:

(1) Credits against the corporate franchise tax under §§ 47-1807.04, 47-1807.05, and 47-1807.06; and

(2) Credits against the unincorporated business franchise tax under § 47-1808.07.

(Oct. 20, 1988, D.C. Law 7-177, § 5, 35 DCR 6158; Apr. 4, 2003, D.C. Law 14-282, § 4, 50 DCR 896.)

Cross references. — Rent charged to licensed, nonprofit child development center, tax credit, see § 47-1807.06.

Tax credit for insurance premiums, see § 47-1807.05.

Tax credit to qualified businesses for wages to qualified employees, see § 47-1807.04.

Unincorporated business, tax credit, see § 47-1808.07.

Prior Codifications. — 1981 Ed., § 5-1404.

Effect of amendments. — D.C. Law 14-282, in subsec. (d)(1), substituted “§§ 47-1807.04, 47-1807.05, and 47-1807.06” for “§§ 47-1807.04 and 47-1807.05”; and in subsec. (d)(2), substituted “§ 47-1808.07” for “§ 47-1808.04”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 4 of the Tax Clarity and Recorder of Deeds Temporary Act of 2002 (D.C. Law 14-191, Oct. 5, 2002, law notification 49 DCR 9549).

For temporary (225 day) amendment of section, see § 4 of the Tax Clarity and Related Amendments Temporary Act of 2002 (D.C. Law 14-228, March 25, 2003, law notification 50 DCR 2741).

Emergency legislation. — For temporary (90 day) amendment of section, see § 4 of Tax Clarity and Recorder of Deeds Emergency Act of 2002 (D.C. Act 14-381, June 6, 2002, 49 DCR 5674).

For temporary (90 day) amendment of section, see § 4 of Tax Clarity and Related Amend-

ments Emergency Act of 2002 (D.C. Act 14-456, July 23, 2002, 49 DCR 8107).

For temporary (90 day) amendment of section, see § 4 of Tax Clarity and Related Amendments Congressional Review Emergency Act of 2002 (D.C. Act 14-510, October 23, 2002, 49 DCR 10247).

Legislative history of Law 7-177. — For legislative history of D.C. Law 7-177, see Historical and Statutory Notes following § 6-1501.

Legislative history of Law 14-282. — Law 14-282, the “Tax Clarity and Recorder of Deeds Act of 2002”, was introduced in Council and assigned Bill No. 14-537, which was referred to Committee on Finance and Revenue. The Bill was adopted on first and second readings on July 2, 2002, and October 1, 2002, respectively. Signed by the Mayor on January 22, 2003, it was assigned Act No. 14-616 and transmitted to both Houses of Congress for its review. D.C. Law 14-282 became effective on April 4, 2003.

Editor’s notes. — CEMI-Ridgecrest, Inc., Real Property Tax and Water and Sewer Changes Relief Qualification Approval Emergency Resolution of 1998: Pursuant to Resolution 12-605, effective July 7, 1998, the Council approved, on an emergency basis, the qualification of the Walter E. Washington Estates Project, in Square 6159, Lot No. 125, in the 800 block of Bellevue Street, S.E., which is located in the Alabama Avenue Development Zone, owned by CEMI-Ridgecrest, Inc., for forgiveness of water and sewer charges and forgiveness and reduction of real property taxes owed.

§ 6-1505. Application.

Nothing in this chapter shall be construed as creating in any person, corporation, unincorporated association, partnership, or other entity any right or entitlement to the tax and other development incentives established by this chapter.

(Oct. 20, 1988, D.C. Law 7-177, § 12, 35 DCR 6158.)

Prior Codifications. — 1981 Ed., § 5-1405.

Legislative history of Law 7-177. — For

legislative history of D.C. Law 7-177, see Historical and Statutory Notes following § 6-1501.

§ 6-1506. Mayor authorized to issue rules.

The Mayor shall, pursuant to subchapter I of Chapter 5 of Title 2, issue rules to implement the provisions of this chapter.

(Oct. 20, 1988, D.C. Law 7-177, § 13, 35 DCR 6158.)

Prior Codifications. — 1981 Ed., § 5-1406.

Temporary Addition of Section. — For temporary (225 day) additions, see §§ 2 to 4 of Off-Premises Wall Sign Moratorium Temporary Act of 2000 (D.C. Law 13-261, April 3, 2001, law notification 48 DCR 3503).

For temporary (225 day) addition, see §§ 2, 3 of Bond Requirement for New Residential Property Construction on Unstable Soil Temporary Act of 2002 (D.C. Law 14-173, July 23, 2002, law notification 49 DCR 8267).

Emergency legislation. — For temporary

(90 day) amendment of §§ 6-1601 to 1603, see §§ 2 to 4 of the Off-Premises Wall Sign Moratorium Emergency Act of 2000 (D.C. Act 13-494, November 29, 2000, 48 DCR 68).

For temporary (90 day) addition of provisions, see §§ 2 to 4 of Bond Requirement for New Residential Property Construction on Unstable Soil Emergency Act of 2002 (D.C. Act 14-348, April 24, 2002, 49 DCR 4412).

Legislative history of Law 7-177. — For legislative history of D.C. Law 7-177, see Historical and Statutory Notes following § 6-1501.

TITLE 7. HUMAN HEALTH CARE AND SAFETY.

SUBTITLE A. GENERAL.

Chapter

1. Public Health.
2. Vital Records.
- 2A. Data Sharing.
3. Reports of Cancer and Malignant Neoplastic Diseases.
4. Limitation on Liability for Medical Care or Assistance in Emergency Situations.
5. Programs for Older Citizens.
6. Death.
- 6A. Non-Resuscitation Procedures for Emergency Medical Services.
7. Long-Term Care Ombudsman Program.
- 7A. Functions of the Department of Health.
- 7B. Health Professional Recruitment Program.
- 7C. Department on Disability Services.
- 7D. Department of Health Care Finance.

SUBTITLE B. CHILD AND INFANT SCREENING; EARLY INTERVENTION.

8. Prevention of Blindness in Infants.
- 8A. Newborn Screening.
- 8B. Newborn Hearing Screening.
- 8C. Early Intervention for Children.
- 8D. Childhood Lead Poisoning Screening and Reporting.
- 8E. Uniform Child Health Screening Requirements.

SUBTITLE B-I. BLIND AND PHYSICALLY DISABLED PERSONS.

9. Register of Blind Persons.
10. Rights of Blind and Physically Disabled Persons.

SUBTITLE C. MENTAL HEALTH.

11. Interstate Compact on Mental Health.
- 11A. Department of Mental Health Establishment.
- 11B. Department of Mental Health Funding Allocation.
12. Mental Health Information.
- 12A. Mental Health Consumers' Rights Protection.

SUBTITLE D. CITIZENS WITH INTELLECTUAL DISABILITIES.

Chapter

13. Citizens with Intellectual Disabilities.

SUBTITLE E. HEALTH CARE SAFETY NET.

14. Health Care Safety Net Administration.

SUBTITLE F. ANATOMICAL PARTS.

15. Anatomical Parts.

SUBTITLE G. AIDS HEALTH CARE.

16. AIDS Health Care.

SUBTITLE G-I. VACCINATIONS AND IMMUNIZATIONS.

16A. Human Papillomavirus Vaccination.

SUBTITLE G-II. USE OF MARIJUANA FOR MEDICAL TREATMENT.

16B. Use of Marijuana for Medical Treatment.

SUBTITLE H. TOBACCO SMOKING, SALES, DISTRIBUTION,
REGULATION, AND SETTLEMENT.

17. Restrictions on Tobacco Smoking.

18. Tobacco Master Settlement Agreement.

SUBTITLE I. PROTECTION AND CARE SYSTEMS.

19. Adult Protective Services.

19A. Community Health Care Financing Fund.

20. Child Care Services and Facilities.

20A. Health Care Ombudsman Program.

21. Youth Residential Facilities Licensures.

21A. Victims of Sexual Assault Emergency Care.

SUBTITLE J. PUBLIC SAFETY.

22. Homeland Security.

23. Public Emergencies.

23A. Emergency Management Assistance Compact.

23B. Emergency Medical Services.

23C. Uniform Emergency Volunteer Health Practitioners.

Chapter

- 24. Nuclear Weapons Freeze.
- 25. Firearms Control.
- 26. Reporting of Injuries Caused by Firearms or Other Dangerous Weapons.
- 27. Health Regulations for Federal Government Restaurants.
- 28. Security and Fire Alarm Systems Regulations.
- 28A. Safe Needle Distribution.
- 28B. Youth Athletic Concussion Protection.

SUBTITLE K. HEALTH CARE SYSTEM DEVELOPMENT COMMISSION.

- 29. Health Care System Development Commission.

SUBTITLE L. SUBSTANCE ABUSE.

- 30. Choice in Drug Treatment.
- 31. Substance Abuse Program for Youth.

SUBTITLE A. GENERAL.

CHAPTER 1. PUBLIC HEALTH.

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- 7-180. Tuberculosis Sanatoria and District of Columbia General Hospital.

Subchapter I. Commissioner of Public Health.

§ 7-101. Appointment; duties generally.

The Mayor of the District of Columbia shall appoint a physician as Commissioner of Public Health, whose duty it shall be, under the direction of the said Mayor, to execute and enforce all laws and regulations relating to the public health and vital statistics, and to perform all such duties as may be assigned to him by said Mayor.

(June 11, 1878, 20 Stat. 107, ch. 180, § 8; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

Prior Codifications. — 1981 Ed., § 6-101. 1973 Ed., § 6-101.

Mayor's Orders. — Establishment of the Mayor's Study Commission on the Public Sector Health Care Delivery System: See Mayor's Order 90-102, July 17, 1990.

Establishment of the Health System Reorganization Office: See Mayor's Order 90-105, July 25, 1990.

Editor's notes. — Office of Director of Public Health abolished: Section 1 of the Act of August 1, 1950, 64 Stat. 393, ch. 513, provided that the Health Officer of the District of Columbia would be known as the Director of Public Health. The Health Department of the District of Columbia, including the office of the head thereof, was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 57 of the Board of Commissioners, dated June 30, 1953, and Reorganization Order No. 52, dated June 30, 1953, combined and redesignated Organization Order No. 141, dated February 11, 1964, established under the direction and control of a Commissioner, a Department of Public Health headed by a Director, for the purpose of planning, implementing, and directing public health and hospital

care programs, and for performing certain other allied medical and paramedical functions. The Anatomical Board was established under the direction and control of the Director of Public Health consisting of members as prescribed in the D. C. Code. The Order prior to redesignation abolished the previously existing Health Department, Gallinger Hospital, Glenn Dale Sanatorium, and the Anatomical Board and transferred their functions and positions to the new Department. The organization of the new Department was set out in the Order. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions stated in Organization Order No. 141 were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by Reorganization Plan No. 2 of 1979, dated February 21, 1980, which Plan established the Department of Human Services.

Reorganization Plan No. 2 of 1979 established the Office of Public Health, headed by a Commissioner of Public Health, in the Department of Human Services.

Department of Human Services established:

Reorganization Plan No. 3 of 1986 re-established the Department of Human Services, headed by a Director.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

Official certificates.

Death certificate held public record, hence admissible in evidence to prove *prima facie*

time, place, and cause of death. D.C. Code 1929, T. 20, §§ 982, 991, 992. *Labofish v. Berman*, 55 F.2d 1022, 1932 U.S. App. LEXIS 3846 (1932).

§ 7-102. Enforcement of vital statistics regulations. [Repealed].

Repealed.

(Oct. 8, 1981, D.C. Law 4-34, § 30(a), 28 DCR 3271.)

Prior Codifications. — 1981 Ed., § 6-102.

Legislative history of Law 4-34. — Law 4-34, the "Vital Records Act of 1981," was introduced in Council and assigned Bill No. 4-161, which was referred to the Committee on Human Services. The Bill was adopted on first and

second readings on June 16, 1981, and June 30, 1981, respectively. Signed by the Mayor on July 20, 1981, it was assigned Act No. 4-58 and transmitted to both Houses of Congress for its review.

§ 7-103. Sanitary Inspectors — Appointment; qualifications; subordinates.

There may be appointed by the Mayor of the District of Columbia, on the recommendation of the Director of the Department of Human Services, a reasonable number of Sanitary Inspectors for said District, to hold such appointment at any 1 time, of whom 2 may be physicians, and 1 shall be a person skilled in the matters of drainage and ventilation; and said Mayor may remove any of the subordinates, and from time to time may prescribe the duties of each.

(June 11, 1878, 20 Stat. 107, ch. 180, § 9; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; Mar. 2, 2007, D.C. Law 16-191, § 6(a), 53 DCR 6794.)

Prior Codifications. — 1981 Ed., § 6-103. 1973 Ed., § 6-104.

Effect of amendments. — D.C. Law 16-191 validated a previously made technical correction.

Legislative history of Law 16-191. — Law 16-191, the "Technical Amendments Act of 2006," was introduced in Council and assigned

Bill No. 16-760, which was referred to the Committee of the whole. The Bill was adopted on first and second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 31, 2006, it was assigned Act No. 16-475 and transmitted to both Houses of Congress for its review. D.C. Law 16-191 became effective on March 2, 2007.

Editor's notes. — Office of Director of Public Health abolished: See Historical and Statutory Notes following § 7-101.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners

under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 7-104. Sanitary Inspectors — Reports.

Said Inspectors shall be respectively required to make, at least once in 2 weeks, a report to said Director of the Department of Human Services, in writing, of their inspections, which shall be preserved on file.

(June 11, 1878, 20 Stat. 107, ch. 180, § 9; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; Mar. 2, 2007, D.C. Law 16-191, § 6(a), 53 DCR 6794.)

Prior Codifications. — 1981 Ed., § 6-104. 1973 Ed., § 6-105.

Effect of amendments. — D.C. Law 16-191 validated a previously made technical correction.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 7-103.

Editor's notes. — Office of Director of Public Health abolished: See Historical and Statutory Notes following § 7-101.

§ 7-105. Report by Director.

Said Director of the Department of Human Services shall report in writing annually to said Mayor of the District of Columbia, and so much oftener as he shall require.

(June 11, 1878, 20 Stat. 107, ch. 180, § 9; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; Mar. 2, 2007, D.C. Law 16-191, § 6(a), 53 DCR 6794.)

Prior Codifications. — 1981 Ed., § 6-105. 1973 Ed., § 6-106.

Effect of amendments. — D.C. Law 16-191 validated a previously made technical correction.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 7-103.

Editor's notes. — Office of Director of Public Health abolished: See Historical and Statutory Notes following § 7-101.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of

Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 7-106. Clerks to Director.

The Mayor of the District of Columbia may appoint, on the like recommendation of the Director of the Department of Human Services, a reasonable number of clerks, but no greater number shall be appointed, and no more persons shall be employed under said Director of the Department of Human Services, than the public interests demand and the appropriation shall justify.

(June 11, 1878, 20 Stat. 107, ch. 180, § 10; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; Mar. 2, 2007, D.C. Law 16-191, § 6(b), 53 DCR 6794.)

Prior Codifications. — 1981 Ed., § 6-106. 1973 Ed., § 6-107.

Effect of amendments. — D.C. Law 16-191 validated a previously made technical correction.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 7-103.

Editor's notes. — Office of Director of Public Health abolished: See Historical and Statutory Notes following § 7-101.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of

Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

Subchapter I-A. Mayor's Council on Physical Fitness, Health, and Nutrition.

§ 7-121. Mayor's Council on Physical Fitness, Health, and Nutrition.

(a) There is established a Mayor's Council on Physical Fitness, Health, and Nutrition ("Mayor's Council") with the mission to improve the health and wellness of all District residents through physical activity and healthy eating.

(b)(1) The following individuals, or their designees, shall be members of the Mayor's Council:

- (A) The Mayor of the District of Columbia;
- (B) The Director of the Department of Parks and Recreation;
- (C) The Chancellor of District of Columbia Public Schools;
- (D) The Chair of the Public Charter School Board;
- (E) The Director of the Department of Aging; and
- (F) Director of the Department of Health;

(2) The Mayor shall designate one of the members listed in paragraph (1) of this subsection to serve as the chairperson. The chairperson shall serve at the pleasure of the Mayor.

(3)(A) In addition to the members listed in paragraph (1) of this subsection, the Mayor's Council shall include:

(i) Five members appointed by the Council of the District of Columbia; and

(ii) Up to 14 members appointed by the Mayor.

(B) All members appointed pursuant to this paragraph shall:

(i) Be residents of the District of Columbia;

(ii) Have experience related to physical fitness, health, or nutrition;

(iii) Serve 3-year terms; and

(iv) Serve without compensation.

(C) Vacancies shall be filled in the same manner as the original appointment.

(c) The Mayor's Council shall meet no fewer than 2 times per year. The time and place of its meetings shall be provided by the executive committee, established by § 7-126; provided, that the Department of Health shall convene at least 2 meetings per year.

(Dec. 2, 2011, D.C. Law 19-58, § 2, 58 DCR 8969.)

Legislative history of Law 19-58. — Law 19-58, the “Mayor’s Council on Physical Fitness, Health, and Nutrition Establishment Act of 2011”, was introduced in Council and assigned Bill No. 19-34, which was referred to the Committee on Health. The Bill was adopted on

first and second readings on July 12, 2011, and September 20, 2011, respectively. Signed by the Mayor on October 14, 2011, it was assigned Act No. 19-188 and transmitted to both Houses of Congress for its review. D.C. Law 19-58 became effective on December 2, 2011.

§ 7-122. Powers and duties.

(a) The Mayor's Council shall:

(1) Advise the Mayor on matters related to physical fitness, obesity, and nutrition;

(2) Develop objectives to raise awareness of the:

(A) Risks of obesity;

(B) Benefits of physical activity and fitness; and

(C) Benefits of healthy eating;

(3) Publish an annual report on the state of physical fitness, obesity, and nutrition, including any recommendations (“fitness report”);

(4) Publish an annual report detailing all gifts, donations, and other funds received and all expenditures; and

(5) Perform any other duties as determined by the Mayor to be necessary or appropriate.

(b) The Mayor's Council may solicit and receive contributions to support the purposes of this subchapter.

(Dec. 2, 2011, D.C. Law 19-58, § 3, 58 DCR 8969.)

Legislative history of Law 19-58. — For history of Law 19-58, see notes under § 7-121.

§ 7-123. Administrative support.

The Department of Health shall assist with the administrative functions of the Mayor's Council as feasible and as not otherwise provided.

(Dec. 2, 2011, D.C. Law 19-58, § 4, 58 DCR 8969.)

Legislative history of Law 19-58. — For history of Law 19-58, see notes under § 7-121.

§ 7-124. Fitness report.

The Department of Health shall provide data relating to physical activity, nutrition, and obesity and technical assistance to the Mayor's Council to assist it in publishing the annual fitness report required by § 7-122(a)(3).

(Dec. 2, 2011, D.C. Law 19-58, § 5, 58 DCR 8969.)

Legislative history of Law 19-58. — For history of Law 19-58, see notes under § 7-121.

§ 7-125. Fitness Fund.

(a) There is established as a nonlapsing fund the Fitness Fund, which shall be separate from the General Fund of the District of Columbia and shall be used solely for the purposes of this subchapter; provided, that not more than 5% of the total funds in the Fitness Fund in any given fiscal year shall be used to pay administrative costs.

(b) The Mayor shall deposit into the Fitness Fund:

- (1) All general revenue funds appropriated for the Mayor's Council;
- (2) Any contributions received:
 - (A) Through solicitation;
 - (B) As gifts, by devise or bequest;
 - (C) As donations or grants; and
 - (D) Through any other revenue source.

(c) All funds deposited into the Fitness Fund, and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in this subchapter without regard to fiscal year limitation, subject to authorization by Congress.

(Dec. 2, 2011, D.C. Law 19-58, § 6, 58 DCR 8969.)

Legislative history of Law 19-58. — For history of Law 19-58, see notes under § 7-121.

§ 7-126. Executive committee.

There is established an executive committee, which shall:

- (1) Be part of the Mayor's Council;
- (2) Advise the Mayor's Council;
- (3) Be led by the chairperson designated pursuant to § 7-121(b)(2);
- (4) Be comprised of not more than 10 members of the Mayor's Council; provided, that at least 3 members are members appointed by the Council, pursuant to § 7-121(b)(3)(A)(i), and 3 members are members appointed by the Mayor, pursuant to § 7-121(b)(3)(A)(ii); and

(5) Meet no fewer than 4 times per year, and at least one time each quarter of the year.

(Dec. 2, 2011, D.C. Law 19-58, § 7, 58 DCR 8969.)

Legislative history of Law 19-58. — For history of Law 19-58, see notes under § 7-121.

Subchapter II. Prevention of Spread of Communicable Diseases.

§ 7-131. Regulations to prevent spread of communicable diseases.

(a) The Mayor may, upon the advice of the Director of the Department of Health and pursuant to subchapter I of Chapter 5 of Title 2, issue rules to prevent and control the spread of communicable diseases, environmentally or occupationally related diseases, and other diseases or medical conditions that the Director of the Department of Health has advised should be monitored for epidemiological or other public health reasons. These rules may include, but shall not necessarily be limited to:

- (1) A list of reportable diseases and conditions;
- (2) Reporting procedures; and

(3) Requirements and procedures for restriction of movement, isolation, and quarantine not inconsistent with this subchapter.

(b)(1) Except as provided in paragraph (2) of this subsection, the Director of the Department of Health shall use the records incident to the case of a disease or medical condition reported under this subchapter for statistical and public health purposes only, and identifying information contained in these records shall be disclosed only when essential to safeguard the physical health of others. No person shall otherwise disclose or redisclose identifying information derived from these records unless:

(A) The person reported gives his or her prior written permission; or

(B) A court finds, upon clear and convincing evidence and after granting the person reported an opportunity to contest the disclosure, that disclosure:

- (i) Is essential to safeguard the physical health of others; or
- (ii) Would afford evidence probative of guilt or innocence in a criminal prosecution.

(2) The constraints on disclosure and redisclosure of identifying information set forth in paragraph (1) of this subsection shall not apply to the disclosure and use of information disclosed and used pursuant to:

- (A) Subchapter I of Chapter 13 of Title 4 [§ 4-1301.01 et seq.]; or
- (B) Chapter 23 of Title 16.

(Aug. 11, 1939, 53 Stat. 1408, ch. 601, § 1; Aug. 8, 1946, 60 Stat. 919, ch. 871, § 1; Feb. 21, 1986, D.C. Law 6-83, § 3(a), 32 DCR 7276; Dec. 4, 2010, D.C. Law 18-273, § 203, 57 DCR 7171.)

Section references. — This section is referred to in §§ 7-132, 7-140, and 38-606.

Prior Codifications. — 1981 Ed., § 6-117. 1973 Ed., § 6-118.

Effect of amendments. — D.C. Law 18-273, in subsec. (a), substituted “Director of the Department of Health” for “Commissioner of Public Health” in two places; in subsec. (b)(1), substituted “Director of the Department of Health” for “Commissioner of Public Health”; and rewrote subsec. (b)(2), which had read as follows: “(2) The prohibitions set forth in paragraph (1) of this subsection shall not apply to the exchange and use of information effected under Chapter 29 of Title 3, subchapter I of Chapter 13 of Title 4, and Chapter 23 of Title 16.”

Emergency legislation. — For temporary (90 day) amendment of section, see § 203 of Data-Sharing and Information Coordination Emergency Amendment Act of 2010 (D.C. Act 18-530, August 6, 2010, 57 DCR 8099).

For temporary (90 day) amendment of section, see § 203 of Data-Sharing and Information Coordination Congressional Review Emergency Amendment Act of 2010 (D.C. Act 18-582, October 20, 2010, 57 DCR 10118).

Legislative history of Law 6-83. — Law 6-83, the “Preventive Health Services Amendments Act of 1985,” was introduced in Council and assigned Bill No. 6-99, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 5, 1985, and November 19, 1985, respectively. Signed by the Mayor on November 27, 1985, it was assigned Act No. 6-108 and transmitted to both Houses of Congress for its review.

Legislative history of Law 18-273. — Law 18-273, the “Data-Sharing and Information Coordination Amendment Act of 2010”, was intro-

duced in Council and assigned Bill No. 18-356 which was referred to the Committee on Health and Human Services. The Bill was adopted on first and second readings on June 1, 2010, and June 29, 2010, respectively. Signed by the Mayor on July 20, 2010, it was assigned Act No. 18-489 and transmitted to both Houses of Congress for its review. D.C. Law 18-273 became effective on December 4, 2010.

Delegation of Authority. — Delegation of authority pursuant to the “Preventive Health Services Amendment Act of 1985”, see Mayor’s Order 98-141, August 20,

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(134) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 7-132. Definitions.

For the purposes of this subchapter, the term:

(1) “Affected with a communicable disease” means a person infected with a communicable disease or exposed to a chemical or radiological agent who is capable of infecting others with the same disease or chemical or radiological agent if permitted to move freely in the general public, or a person who, while not infected with a communicable disease or exposed to a chemical or radiological agent, is a carrier of, or contaminated with, an infectious disease or chemical or radiological agent and capable of infecting others with the disease or chemical or radiological agent.

(2) “Communicable disease” means any disease:

(A) Denominated a reportable disease pursuant to § 7-131, including any illness due to an infectious agent or its toxic product that is transmitted:

(i) Directly or indirectly to a well person from an infected person, animal, or ectoparasite; or

(ii) Through the agency of an intermediate host or vector, or by exposure to chemical or radiological agents within the immediate environment; or

(B) Occurring as an outbreak of illness or toxic conditions, regardless of etiology, in an institution or other identifiable group of people.

(Aug. 11, 1939, 53 Stat. 1408, ch. 601, § 2; Aug. 8, 1946, 60 Stat. 919, ch. 871, § 2; Feb. 21, 1986, D.C. Law 6-83, § 3(b), 32 DCR 7276; Oct. 17, 2002, D.C. Law 14-194, § 902(a), 49 DCR 5306.)

Section references. — This section is referred to in §§ 7-2301 and 38-606.

Prior Codifications. — 1981 Ed., § 6-118. 1973 Ed., § 6-119.

Effect of amendments. — D.C. Law 14-194 rewrote the section which had read as follows: “§ 7-132. ‘Communicable disease’ defined. ‘For the purposes of this subchapter, the term ‘communicable disease’ means that term as it is defined in § 8-5:103 of the District of Columbia Health Regulations (22 DCMR 299) or by the Mayor pursuant to § 7-131.”

Legislative history of Law 6-83. — For legislative history of D.C. Law 6-83, see Historical and Statutory Notes following § 7-131.

Legislative history of Law 14-194. — Law 14-194, the “Omnibus Anti-Terrorism Act of 2002”, was introduced in Council and assigned Bill No. 14-373, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 9, 2002, and May 7, 2002, respectively. Signed by the Mayor on June 3, 2002, it was assigned Act No. 14-380 and transmitted to both Houses of Congress for its review. D.C. Law 14-194 became effective on October 17, 2002.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(135) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 7-133. Persons believed to be carriers of communicable diseases — Order for removal.

(a) Whenever the Mayor, after consultation with the Director of the Department of Health, has probable cause to believe that a person is affected with a communicable disease or is a carrier of a communicable disease and that the person’s presence in the general population is likely to cause death or seriously impair the health of others, the Mayor may, by written order, direct the removal of that person for the purpose of isolation, quarantine, or treatment. The order shall state a place of detention within the District of Columbia or outside of the District of Columbia; provided, that any place of detention outside the District of Columbia is under the supervision of the District of Columbia government.

(b) The order shall be executed by a member of the Metropolitan Police Department or any designated employee of the District of Columbia. The person executing the order shall inform the person subject to the order of its contents and provide the person with a copy of the order.

(c) Whenever the Mayor, after consultation with the Director of the Department of Health, has probable cause to believe that one or more groups of people at one or more locations are affected with a communicable disease and that the group’s ability to move freely in the general population is likely to cause death

or seriously impair the health of others, the Mayor may, by written order, direct the removal or detention of any such group for the purpose of isolation, quarantine, or treatment. The order shall state the bounds of the area subject to the order, and the person or persons executing the order shall inform, by reasonable means, all persons within the bounds of the detention area of the contents of the order and post a copy of the order in a conspicuous place in the bounds of the detention area.

(Aug. 11, 1939, ch. 601, § 3; Aug. 8, 1946, 60 Stat. 919, ch. 871, § 2; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; Oct. 17, 2002, D.C. Law 14-194, § 902(b), 49 DCR 5306.)

Section references. — This section is referred to in §§ 7-134, 7-137, and 38-606.

Prior Codifications. — 1981 Ed., § 6-119. 1973 Ed., § 6-119a.

Effect of amendments. — D.C. Law 14-194 rewrote the section which had read as follows: “§ 7-133. Persons believed to be carriers of communicable diseases—Order for removal. “Whenever the Director of the Department of Human Services has probable cause to believe that any person is affected with any communicable disease or is a carrier of communicable disease and that the continuance of such person in the place where he may be is likely to be dangerous to the lives or health of other persons, or that by reason of the noncooperation or carelessness of such person the public health is likely to be endangered, the Director of the Department of Human Services may by written order direct the removal by any designated officer or employee of the Department of Human Services or by any member of the Metropolitan Police force of such person to and the detention of such person in any place or insti-

tution in the District of Columbia designated by the Director of the Department of Human Services, or any institution located without the District of Columbia which may be designated by the Director of the Department of Human Services, and which is under the supervision of the government of the District of Columbia or any agency thereof. Such officer, employee, or member so designated in such order shall take such person into his custody and shall remove such person to such place or institution as may be designated in such order. Such officer, employee, or member shall immediately make known to such person the contents of such order, and also shall deliver to such person a true copy of such order.”

Legislative history of Law 14-194. — For Law 14-194, see notes following § 7-132.

Editor's notes. — Office of Director of Public Health abolished: See Historical and Statutory Notes following § 7-101.

Health Department abolished: See Historical and Statutory Notes following § 7-180.

CASE NOTES

ANALYSIS

Habeas corpus relief.

In general.

Habeas corpus relief.

Habeas corpus was available to relator, being detained in hospital section of jail on grounds that he would endanger health if left at large, to test the place of detention. D.C. Code 1951, § 6-119a. *Benton v. Reid*, 231 F.2d 780, 1956 U.S. App. LEXIS 3468 (C.A.D.C. 1956).

Where relator was incorrectly denied habeas corpus to secure his release from detention in hospital section of District of Columbia Jail as a person who would endanger public health if left at large, Court of Appeals would remand case with directions to issue the writ and discharge relator from the custody of jail, without prejudice to District of Columbia's right to transfer relator to a hospital or other proper place of

detention. D.C. Code 1951, § 6-119a. *Benton v. Reid*, 231 F.2d 780, 1956 U.S. App. LEXIS 3468 (C.A.D.C. 1956).

In general.

Statute authorizing Director of Public Health to designate as a place for detention of a person who would endanger public health if left at large, any place or institution in the District did not authorize detention of such a person in a place of imprisonment or a jail. D.C. Code 1951, § 6-119b. *Benton v. Reid*, 231 F.2d 780, 1956 U.S. App. LEXIS 3468 (C.A.D.C. 1956).

In the absence of specific language, Court of Appeals would not infer that Congress intended to enact a statute providing that a person who would endanger public health if left at large but who was neither indicted for nor convicted of any crime could be confined in a penal institution to suffer the social stigma and bad associations resulting therefrom. D.C.

Code 1951, § 6-119b. *Benton v. Reid*, 231 F.2d 780, 1956 U.S. App. LEXIS 3468 (C.A.D.C. 1956).

It was duty of Court of Appeals in interpreting statute authorizing Director of Public Health to designate a place for detention of

persons who would endanger public health if left at large, to avoid doubts as to constitutional validity of such statute. D.C. Code 1951, § 6-119b. *Benton v. Reid*, 231 F.2d 780, 1956 U.S. App. LEXIS 3468 (C.A.D.C. 1956).

§ 7-134. Persons believed to be carriers of communicable diseases — Detention; expiration of order; continuation; hearing on detention; minors.

(a) A copy of the order provided for in § 7-133 shall be delivered to the person in charge of any place or institution where a person or group of persons has been taken or detained, or, if the place of detention is a residence, to any person of suitable age and discretion then present in the residence. The order shall constitute the authority for detention until the order expires. The order shall expire within 24 hours of its issuance unless a judge of the Superior Court of the District of Columbia continues its force and effect for a longer period. The judge shall continue the force and effect of an order if the judge finds that probable cause exists to believe that the detained person's presence in the general population is likely to cause death or seriously impair the health of others.

(b) If a judge continues an order, any person or group of persons detained pursuant to the order may petition for a hearing to determine whether the person or group of persons is affected with a communicable disease, and, if the person or group of persons is affected with a communicable disease, whether release of the person or group of persons into the general population is likely to cause death or seriously impair the health of others. The hearing shall take place as soon as practicable, but no later than 10 days after the court receives the petition.

(Aug. 11, 1939, ch. 601, § 4; Aug. 8, 1946, 60 Stat. 919, ch. 871, § 2; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); Oct. 17, 2002, D.C. Law 14-194, § 902(c), 49 DCR 5306.)

Section references. — This section is referred to in §§ 7-136 and 38-606.

Prior Codifications. — 1981 Ed., § 6-120. 1973 Ed., § 6-119b.

Effect of amendments. — D.C. Law 14-194 rewrote the section.

Legislative history of Law 14-194. — For Law 14-194, see notes following § 7-132.

Editor's notes. — Office of Director of Public Health abolished: See Historical and Statutory Notes following § 7-101.

CASE NOTES

In general.

In the absence of specific language, Court of Appeals would not infer that Congress intended to enact a statute providing that a person who would endanger public health if left at large but who was neither indicted for nor convicted of any crime could be confined in a penal institution to suffer the social stigma and

bad associations resulting therefrom. D.C. Code 1951, § 6-119b. *Benton v. Reid*, 231 F.2d 780, 1956 U.S. App. LEXIS 3468 (C.A.D.C. 1956).

Where relator was incorrectly denied habeas corpus to secure his release from detention in hospital section of District of Columbia Jail as a person who would endanger public health if left

at large, Court of Appeals would remand case with directions to issue the writ and discharge relator from the custody of jail, without prejudice to District of Columbia's right to transfer

relator to a hospital or other proper place of detention. D.C. Code 1951, § 6-119a. *Benton v. Reid*, 231 F.2d 780, 1956 U.S. App. LEXIS 3468 (C.A.D.C. 1956).

§ 7-135. Persons believed to be carriers of communicable diseases — Examination; diagnosis; detention for quarantine; discharge; public hearing.

(a) The Mayor shall cause to be conducted, by medical personnel designated by the Mayor, medical examinations of all detained persons to determine whether any detained person is affected with a communicable disease and immediately discharge any person who is not affected with a communicable disease. The diagnosis resulting from the examination shall be in writing and signed by the examining physician. A copy of the signed diagnosis shall be retained by any person in charge of the place or institution of detention, or, if the place of detention is a residence, by any person of suitable age and discretion who resides there. A copy of the signed diagnosis also shall be given to the detained person for whom the diagnosis was made. Another copy of the signed diagnosis shall be transmitted to the appropriate health official as designated by the Mayor.

(b) A person who has been diagnosed as being affected with a communicable disease may be detained for as long as necessary to protect the public health. A person detained pursuant to this subsection may at any time petition the Superior Court of the District of Columbia for a discharge hearing. A person detained pursuant to this subsection who chooses to petition the Superior Court of the District of Columbia for a discharge hearing shall be provided with counsel if the person detained cannot afford counsel.

(Aug. 11, 1939, ch. 601, § 5; Aug. 8, 1946, 60 Stat. 920, ch. 871, § 2; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); Feb. 21, 1986, D.C. Law 6-83, § 3(c), 32 DCR 7276; Oct. 17, 2002, D.C. Law 14-194, § 902(d), 49 DCR 5306.)

Section references. — This section is referred to in §§ 7-136, 7-137, and 38-606.

Prior Codifications. — 1981 Ed., § 6-121. 1973 Ed., § 6-119c.

Effect of amendments. — D.C. Law 14-194 rewrote the section.

Legislative history of Law 6-83. — For

legislative history of D.C. Law 6-83, see Historical and Statutory Notes following § 7-131.

Legislative history of Law 14-194. — For Law 14-194, see notes following § 7-132.

Editor's notes. — Office of Director of Public Health abolished; See Historical and Statutory Notes following § 7-101.

§ 7-136. Persons believed to be carriers of communicable diseases — Leaving detention without discharge.

It shall be unlawful for a person detained in a place or institution pursuant to an order of the Mayor to leave said place or institution unless discharged in the manner provided in § 7-134 or 7-135.

(Aug. 11, 1939, ch. 601, § 6; Aug. 8, 1946, 60 Stat. 921, ch. 871, § 2; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; Oct. 17, 2002, D.C. Law 14-194, § 902(e), 49 DCR 5306; Mar. 13, 2004, D.C. Law 15-105, § 44(a), 51 DCR 881.)

Section references. — This section is referred to in §§ 7-140 and 38-606.

Prior Codifications. — 1981 Ed., § 6-122. 1973 Ed., § 6-119d.

Effect of amendments. — D.C. Law 14-194 substituted “Mayor” for “Director of the Department of Human Services”.

D.C. Law 15-105 validated a previously made technical correction.

Legislative history of Law 14-194. — For Law 14-194, see notes following § 7-132.

Legislative history of Law 15-105. — Law 15-105, the “Technical Amendments Act of

2003”, was introduced in Council and assigned Bill No. 15-437, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 2003, and December 2, 2003, respectively. Signed by the Mayor on January 6, 2004, it was assigned Act No. 15-291 and transmitted to both Houses of Congress for its review. D.C. Law 15-105 became effective on March 13, 2004.

Editor’s notes. — Office of Director of Public Health abolished: See Historical and Statutory Notes following § 7-101.

§ 7-137. Persons believed to be carriers of communicable diseases — Arrest.

(a) In aid of the powers vested in the Mayor to cause the removal to and detention in a place or institution of a person who is affected or is believed, upon probable cause, to be affected with any communicable disease or is or is believed, upon probable cause, to be a carrier of communicable disease as provided in this subchapter, the Superior Court of the District of Columbia, or any judge thereof, is authorized to issue a warrant for the arrest of such person and his removal to a place or institution as defined in § 7-133, which warrant shall be directed to the Chief of Police. When such person has been removed to such place or institution under authority of a warrant issued pursuant to this section, such person shall not be discharged from such place or institution except in the manner provided in § 7-135.

(b) No such warrant of arrest and removal shall be issued except upon probable cause supported by affidavit or affidavits particularly describing the person to be taken, which said affidavit or affidavits shall set forth the facts tending to establish the grounds of the application or probable cause for believing that they exist.

(c) A warrant may in all cases be served by the Chief of Police or by any officer or member of the Metropolitan Police, but by no other person, except in aid of the officer on his requiring it, he being present and acting in its execution.

(d) The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance.

(e) A warrant must be returned to the Court within 10 days after its date; after the expiration of this time the warrant, unless executed, is void.

(f) It shall be the duty of the said Court to maintain and keep records of all warrants issued and the returns thereon.

(Aug. 11, 1939, ch. 601, § 7; Aug. 8, 1946, 60 Stat. 921, ch. 871, § 2; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1;

July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); Oct. 17, 2002, D.C. Law 14-194, § 902(f), 49 DCR 5306; Mar. 13, 2004, D.C. Law 15-105, § 44(b), 51 DCR 881.)

Section references. — This section is referred to in § 38-606.

Prior Codifications. — 1981 Ed., § 6-123. 1973 Ed., § 6-119e.

Effect of amendments. — D.C. Law 14-194, in subsec. (a), substituted “Mayor” for “Director of the Department of Human Services”.

D.C. Law 15-105, in subsec. (a), validated a previously made technical correction.

Legislative history of Law 14-194. — For Law 14-194, see notes following § 7-132.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 7-136.

Editor’s notes. — Office of Major and Superintendent of Metropolitan Police abolished: The Office of the Major and Superintendent of Metropolitan Police was abolished and all func-

tions of that office transferred to and vested in the Chief of Police. The Assistant Superintendent, Executive Officer of the Metropolitan Police Department was designated “Deputy Chief of Police, Executive Officer”; the Assistant Superintendent of the Metropolitan Police in command of the Detective Bureau was designated “Deputy Chief of Police, Chief of Detectives”; and each other Assistant Superintendent of the Metropolitan Police was designated “Deputy Chief of Police” by Reorganization Order No. 7, dated September 16, 1952. Reorganization Order No. 7 was replaced by Organization Order No. 153, dated November 10, 1966.

Office of Director of Public Health abolished: See Historical and Statutory Notes following § 7-101.

§ 7-138. Access to building for inspection.

The Mayor may, without fee or hindrance, enter, examine, and inspect all vessels, premises, grounds, structures, buildings, and every part thereof in the District of Columbia for the purpose of carrying out the provisions of this subchapter and the rules and regulations issued hereunder. The owner or his agent or representative and the lessee or occupant of any such vessel, premises, grounds, structure, or building, or part thereof, and every person having the care and management thereof shall at all times when required by any such officer or employee give them free access thereto and refusal so to do shall be punishable as a violation of this subchapter.

(Aug. 11, 1939, ch. 601, § 8; Aug. 8, 1946, 60 Stat. 921, ch. 871, § 2; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; Feb. 21, 1986, D.C. Law 6-83, § 3(d), 32 DCR 7276; Oct. 17, 2002, D.C. Law 14-194, § 902(g), 49 DCR 5306; Mar. 13, 2004, D.C. Law 15-105, § 44(c), 51 DCR 881.)

Section references. — This section is referred to in §§ 7-140 and 38-606.

Prior Codifications. — 1981 Ed., § 6-124. 1973 Ed., § 6-119f.

Effect of amendments. — D.C. Law 14-194 substituted “Mayor” for “Director of the Department of Human Services”.

D.C. Law 15-105 validated a previously made technical correction.

Legislative history of Law 6-83. — For

legislative history of D.C. Law 6-83, see Historical and Statutory Notes following § 7-131.

Legislative history of Law 14-194. — For Law 14-194, see notes following § 7-132.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 7-136.

Editor’s notes. — Office of Director of Public Health abolished: See Historical and Statutory Notes following § 7-101.

§ 7-139. Interference unlawful.

It shall be unlawful for any person knowingly to obstruct, resist, oppose, or interfere with any person performing any duty or function under the authority of this subchapter or any rule or regulation promulgated thereunder.

(Aug. 11, 1939, ch. 601, § 9; Aug. 8, 1946, 60 Stat. 922, ch. 871, § 2; Feb. 21, 1986, D.C. Law 6-83, § 3(e), 32 DCR 7276.)

Section references. — This section is referred to in §§ 7-131, 7-132, 7-134, 7-135, 7-137, 7-138, 7-140 to 7-142, 7-144, and 38-606.

Prior Codifications. — 1981 Ed., § 6-125.

1973 Ed., § 6-119g.

Legislative history of Law 6-83. — For legislative history of D.C. Law 6-83, see Historical and Statutory Notes following § 7-131.

§ 7-140. Violation of § 7-136, § 7-138, or § 7-139, or rules or regulations promulgated thereunder.

Any person who willfully violates § 7-136, 7-138, or 7-139 or who willfully discloses, receives, uses, or permits the use of information in violation of § 7-131(b) shall be guilty of a misdemeanor and, upon conviction, subject to a fine not exceeding \$5,000, imprisonment for not more than 90 days, or both. Any person who willfully violates any rule or regulation issued pursuant to this subchapter shall be guilty of a misdemeanor and, upon conviction, subject to a fine not exceeding \$1,000, imprisonment for not more than 30 days, or both. All prosecutions for violations of § 7-136, 7-138 or 7-139 or the rules and regulations issued pursuant to this subchapter shall be in the Criminal Division of the Superior Court of the District of Columbia, in the name of the District of Columbia upon information filed by the Corporation Counsel of the District of Columbia or any of his assistants. The Court may impose conditions upon any person found guilty under the aforesaid provisions and so long as such person shall comply therewith to the satisfaction of the Court the imposition or execution of sentence may be suspended for such period as the Court may direct; and the Court may at or before the expiration of such period vacate such sentence or cause it to be executed. Conditions thus imposed by the Court may include submission to medical and mental examination, diagnosis, and treatment by proper public health and welfare authorities or by any licensed physician approved by the Court, and such other terms and conditions as the Court may deem best for the protection of the community and the punishment, control, and rehabilitation of the defendant.

(Aug. 11, 1939, ch. 601, § 10; Aug. 8, 1946, 60 Stat. 922, ch. 871, § 2; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); Feb. 21, 1986, D.C. Law 6-83, § 3(f), 32 DCR 7276; Oct. 17, 2002, D.C. Law 14-194, § 902(h), 49 DCR 5306.)

Section references. — This section is referred to in § 38-606.

Prior Codifications. — 1981 Ed., § 6-126.
1973 Ed., § 6-119h.

Effect of amendments. — D.C. Law 14-194 deleted the last sentence in the section which had read as follows: "The Director of the Department of Human Services of the District of Columbia, the Metropolitan Police force, and employees of the Department of Human Services are authorized and directed to perform such duties as may be directed by the Court in

effectuating compliance with the conditions so imposed upon any defendant."

Legislative history of Law 6-83. — For legislative history of D.C. Law 6-83, see Historical and Statutory Notes following § 7-131.

Legislative history of Law 14-194. — For Law 14-194, see notes following § 7-132.

Editor's notes. — Board of Public Welfare abolished: The Board of Public Welfare was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of

1952. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Reorganization Order No. 58 as amended, redesignated as Organization Order No. 140 and amended, established under the direction and control of a Commissioner, a Department of Public Welfare, headed by a Director with the purpose of planning, implementing and directing public welfare programs. Reorganization Order No. 58 provided that the previously existing Board of Public Welfare would be abolished. That Order also transferred specified functions of the former board to the Department of Public Health and the Department of Public Welfare. Functions of the Department of Public Welfare and of the Department of Public Health as set forth in Organization Order Nos. 140 and 141, respectively, were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by the Department of Human Services by Reorganization Plan No. 2 of 1979, dated February 21, 1980.

Office of Director of Public Health abolished: See Historical and Statutory Notes following § 7-101.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(136) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 7-141. Exemption for persons relying on spiritual means to cure disease.

With respect to all persons who, either on behalf of themselves or their minor children or wards, rely in good faith upon spiritual means or prayer in the free exercise of religion to prevent or cure disease, nothing in this subchapter or any rule or regulation issued pursuant to this subchapter shall have the effect of requiring or giving any health officer or other person the right to compel any such person, minor child or ward, to go to or be confined in a hospital or other medical institution unless no other place for quarantine of such person, minor child or ward can be secured, nor to compel any such person, child or ward to submit to any medical treatment.

(Aug. 11, 1939, ch. 601, § 11; Aug. 8, 1946, 60 Stat. 922, ch. 871, § 2; Feb. 21, 1986, D.C. Law 6-83, § 3(g), 32 DCR 7276.)

Section references. — This section is referred to in § 38-606.

Prior Codifications. — 1981 Ed., § 6-127.
1973 Ed., § 6-119i.

Legislative history of Law 6-83. — For legislative history of D.C. Law 6-83, see Historical and Statutory Notes following § 7-131.

§ 7-142. "Director of the Department of Human Services" defined. [Repealed].

Repealed.

(Aug. 11, 1939, ch. 601, § 12; Aug. 8, 1946, 60 Stat. 922, ch. 871, § 2; Aug. 1,

1950, 64 Stat. 393, ch. 513, § 1; Oct. 17, 2002, D.C. Law 14-194, § 904, 49 DCR 5306.)

Prior Codifications. — 1981 Ed., § 6-128. 1973 Ed., § 6-119j.

Legislative history of Law 14-194. — For Law 14-194, see notes following § 7-132.

Editor's notes. — Office of Director of Public Health abolished: See Historical and Statutory Notes following § 7-101.

§ 7-143. Immediate treatment of minor with venereal disease. [Repealed].

Repealed.

(Feb. 21, 1986, D.C. Law 6-83, § 7(a), 32 DCR 7276.)

Prior Codifications. — 1981 Ed., § 6-129. **Legislative history of Law 6-83.** — For

legislative history of D.C. Law 6-83, see Historical and Statutory Notes following § 7-131.

§ 7-144. Construction.

Each and every provision of this subchapter shall be constructed liberally in aid of the powers vested in the public authorities looking to the protection of the public health, comfort, and welfare and not by way of limitation.

(Aug. 11, 1939, ch. 601, § 14; Aug. 8, 1946, 60 Stat. 922, ch. 871, § 2; Oct. 11, 1963, 77 Stat. 246, Pub. L. 88-137, § 1.)

Cross references. — Medical care and treatment, requirement to obtain, see § 38-606.

Prior Codifications. — 1981 Ed., § 6-130. 1973 Ed., § 6-119k.

Subchapter III. Department of Public Health.

§ 7-151. Establishment of the Department of Public Health.

There is established in the Executive Branch of the Government of the District of Columbia a Department of Public Health, which shall have as its responsibility the planning, development and implementation of the delivery of health care services to all District of Columbia residents.

(Mar. 13, 1992, D.C. Law 9-182, § 2, 39 DCR 8203.)

Prior Codifications. — 1981 Ed., § 6-131.

Legislative history of Law 9-182. — Law 9-182, the "Department of Public Health Establishment Act of 1992," was introduced in Council and assigned Bill No. 9-40, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on July 7, 1992, and October 6, 1992, respectively. Signed by the Mayor on November 2, 1992, it was assigned Act No. 9-302 and transmitted to both Houses of Congress for its

review. D.C. Law 9-182 became effective on March 13, 1993.

Transfer of Functions. — Pursuant to Reorganization Plan No. 4 of 1996 each of the functions assigned, and authorities delegated to the Director of the Department of Human Services as set forth in Sections III. (K), (L), and (P), of Reorganization Plan No. 3 of 1986, dated January 3, 1987.

The administrative and management support functions in the Department of Human

Services as set forth in Sections III. (A), (B), (C), (D), (E), and (F), of Reorganization Plan No. 3 of 1986, dated January 3, 1987, that relate to the functions set forth in section V. (A)(1) above were transferred to the Department of Health.

Mayor's Orders. — Establishment and Appointments — Mayor's Bioterrorism Preparedness and Response Program Advisory Committee, see Mayor's Order 2002-77, May 3, 2002 (49 DCR 4137).

Establishment and Appointments — Mayor's Hospital Bioterrorism Preparedness Planning Advisory Committee, see Mayor's Order 2002-78, May 3, 2002 (49 DCR 4143).

Amendment of Mayor's Order 2002-77, dated 4-5-02, Establishment and Appointments — Mayor's Bioterrorism Preparedness and Response Program Advisory Committee, see Mayor's Order 2002-145, August 30, 2002 (49 DCR 8411).

Amendment of Mayor's Order 2002-78, dated 4-15-02, Establishment and Appointments — Mayor's Hospital Bioterrorism Preparedness, see Mayor's Order 2002-147, August 30, 2002 (49 DCR 8415).

§ 7-152. Organization of the Department of Public Health.

(a) Pursuant to subchapter VI of Chapter 3 of Title 1, the Mayor shall prepare and transmit to the Council a reorganization plan establishing a Department of Public Health no later than October 1, 1993.

(b) The reorganization plan establishing the Department of Public Health shall have, at a minimum, all functions, powers and duties of the Commission on Public Health, including supportive services provided to the Commission on Public Health by the Department of Human Services' Management and Support Services Division.

(c) The Mayor may prepare and transmit to the Council a reorganization plan for the remaining functions of the Department of Human Services at the same time as the reorganization plan establishing the Department of Public Health is transmitted to the Council.

(d) The reorganization plan establishing the Department of Public Health shall become effective no later than October 1, 1994.

(Mar. 13, 1992, D.C. Law 9-182, § 3, 39 DCR 8203.)

Prior Codifications. — 1981 Ed., § 6-132.

Legislative history of Law 9-182. — For legislative history of D.C. Law 9-182, see Historical and Statutory Notes following § 7-151.

Transfer of Functions. — Pursuant to Reorganization Plan No. 4 of 1996 each of the functions assigned, and authorities delegated to the Director of the Department of Human Services as set forth in Sections III. (K), (L),

and (P), of Reorganization Plan No. 3 of 1986, dated January 3, 1987.

The administrative and management support functions in the Department of Human Services as set forth in Sections III. (A), (B), (C), (D), (E), and (F), of Reorganization Plan No. 3 of 1986, dated January 3, 1987, that relate to the functions set forth in section V. (A)(I) above were transferred to the Department of Health.

§ 7-153. Appointment of Director.

The Department of Public Health shall be under the supervision and direction of a Director who shall be appointed by the Mayor in accordance with subchapter X of Chapter 6 of Title 1, and subject to the advice and consent of the Council, as provided in § 1-523.01.

(Mar. 13, 1992, D.C. Law 9-182, § 4, 39 DCR 8203.)

Prior Codifications. — 1981 Ed., § 6-133.

Legislative history of Law 9-182. — For

legislative history of D.C. Law 9-182, see Historical and Statutory Notes following § 7-151.

§ 7-154. Establishment of Public Health Coordination Advisory Committee.

(a) There is established a Public Health Coordination Advisory Committee ("Committee") which shall be responsible for advising the Director of the Department of Public Health, the Mayor and the Council on policy matters related to the effective and efficient coordination of the delivery of public health care services in the District of Columbia.

(b) The Committee shall include:

(1) The Director of the Department of Public Health who shall serve as the chairperson;

(2) The Director of the Department of Mental Health or a designee;

(3) The Commissioner of Social Services or a designee;

(4) The Executive Director of the District of Columbia General Hospital or a designee;

(5) The Executive Director of the Office on Aging or a designee;

(6) The Director of the Department of Consumer and Regulatory Affairs or a designee;

(7) The President of the Doctors Council of the District of Columbia, representing employees in Compensation Unit 19, or a designee; and

(8) The following persons who shall be appointed by the Mayor:

(A) 1 licensed physician and 1 licensed dentist employed by a District health care facility;

(B) 2 licensed nurses employed by a District health care facility; and

(C) 2 consumers of health care services in the District.

(c) The duties of the Committee shall include advising the Director of the Department of Public Health on the development, implementation and monitoring of a comprehensive plan to coordinate the delivery of District health care services provided by the public health clinics of the Department of Public Health and the District of Columbia General Hospital to provide a comprehensive continuum of efficient and quality health care services to District residents.

(Mar. 13, 1992, D.C. Law 9-182, § 5, 39 DCR 8203; Dec. 18, 2001, D.C. Law 14-56, § 116(d), 48 DCR 7674.)

Prior Codifications. — 1981 Ed., § 6-134.

Effect of amendments. — D.C. Law 14-56, in subsec. (b)(2), substituted "Director of the Department of Mental Health" for "Commissioner of Mental Health Services".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 16(d) of Department of Mental Health Establishment Temporary Amendment Act of 2001 (D.C. Law 14-51, October 30, 2001, law notification 48 DCR 10807).

Emergency legislation. — For temporary (90 day) amendment of section, see § 16(d) of Department of Mental Health Establishment Emergency Amendment Act of 2001 (D.C. Act 14-55, May 2, 2001, 48 DCR 4390).

For temporary (90 day) amendment of section, see § 16(d) of Department of Mental Health Establishment Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-101, July 23, 2001, 48 DCR 7123).

For temporary (90 day) amendment of section, see § 116(d) of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

Legislative history of Law 9-182. — For legislative history of D.C. Law 9-182, see Historical and Statutory Notes following § 7-151.

Legislative history of Law 14-56. — Law 14-56, the "Mental Health Service Delivery Reform Act of 2001", was introduced in Council

and assigned Bill No. 14-136, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 26, 2001, and July 10, 2001, respectively. Signed by the Mayor on July 24,

2001, it was assigned Act No. 14-119 and transmitted to both Houses of Congress for its review. D.C. Law 14-56 became effective on December 18, 2001.

Subchapter III-A. Patient Safety — Adverse Event Reporting.

§ 7-161. Mandatory adverse event reporting.

(a) For the purposes of this section, the term:

(1) “Adverse event” means an event, occurrence, or situation involving the medical care of a patient by a health care provider that results in death or an unanticipated injury to the patient.

(2) “Healthcare provider” means an individual or entity licensed or otherwise authorized under District law to provide healthcare service, including a hospital, nursing facility, comprehensive outpatient rehabilitation facility, home health agency, hospice program, renal dialysis facility, ambulatory surgical center, pharmacy, physician or health care practitioner’s office, long-term care facility, behavior health residential treatment facility, health clinic, clinical laboratory, health center, physician, physician assistant, nurse practitioner, clinical nurse specialist, certified registered nurse anesthetist, certified nurse midwife, psychologist, certified social worker, registered dietitian or nutrition professional, physical or occupational therapist, pharmacist, or other individual health care practitioner.

(3) “Medical facility” means a hospital, nursing facility, comprehensive outpatient rehabilitation facility, home health agency, hospice program, renal dialysis facility, ambulatory surgical center, pharmacy, physician or health care practitioner’s office, long-term care facility, behavior health residential treatment facility, health clinic, clinical laboratory, or health center.

(4) “Primary health record” means the record of continuing care maintained by a health professional, group practice, or health care facility or agency containing all diagnostic and therapeutic services rendered to an individual patient by the health professional, group practice, or health care facility, or agency.

(b) On or before July 1, 2007, the Mayor shall establish, within the Department of Health, a centralized system for the collection and analysis of adverse events in the District of Columbia.

(c) The Mayor shall appoint an employee of the Department of Health to administer the system, whose responsibilities shall include:

(1) Collecting, organizing, and storing data on adverse events occurring at medical facilities in the District of Columbia;

(2) Tracking, assessing, and analyzing the incoming reports, findings, and corrective action plans;

(3) Identifying common adverse event patterns or trends;

(4) Recommending methods to reduce systematic adverse events;

(5) Providing technical assistance to healthcare providers and medical facilities on the development and implementation of patient safety plans to prevent adverse events;

(6) Disseminating information and advising healthcare providers and medical facilities in the District of Columbia on medical best practices;

(7) Monitoring national trends in best practices and disseminating relevant information and advice to healthcare providers and medical facilities in the District of Columbia; and

(8) Publishing an annual report that includes summary data of the number and types of adverse events of the prior calendar year by type of healthcare providers and medical facility, rates of change, and other analyses and communicating recommendations to improve health care delivery in the District of Columbia.

(d)(1) Pursuant to this section, healthcare providers and medical facilities providing services in the District of Columbia shall submit a report of an adverse event to the system administrator no later than 60 days after its occurrence, or within an earlier time frame if so promulgated by the Board of Medicine. Each report shall contain, for each adverse event, the patient's full primary health record; provided, that medical information with respect to the patient's identity shall be de-identified and anonymous.

(2) Failure to submit a report as required by this section shall be punishable by a penalty of not less than \$500 or more than \$2,500.

(e)(1) Except as otherwise provided by this section, the files, records, findings, opinions, recommendations, evaluations, and reports of the system administrator, information provided to or obtained by the system administrator, the identity of persons providing information to the system administrator, and reports or information provided pursuant to this section shall be confidential, shall not be subject to disclosure pursuant to any other provision of law, and shall not be discoverable or admissible into evidence in any civil, criminal, or legislative proceeding. The information shall not be disclosed by any person under any circumstances. This subsection shall not preclude use of reports or information provided under this section by a board regulating a health profession or the Mayor in proceedings by the board or the Mayor.

(2) No person who provided information to the system administrator shall be compelled to testify in any civil, criminal, or legislative proceeding with respect to any confidential matter contained in the information provided to the system administrator.

(3) Notwithstanding subsections (a) or (b) of this section, a court may order a system administrator to provide information in a criminal proceeding in which an individual is accused of a felony if the court determines that disclosure is essential to protect the public interest and that the information being sought can be obtained from no other source. In determining whether disclosure is essential to protect the public interest, the court shall consider the seriousness of the offense with which the individual is charged, the need for disclosure of the party seeking it, and the probative value of the information. If the court orders disclosure, the identity of any patient shall not be disclosed without the consent of the patient or his or her legal representative.

(f) Implementation of this section shall be funded through the licensure fees collected by the Board of Medicine.

(Mar. 14, 2007, D.C. Law 16-263, § 202, 54 DCR 807; Mar. 20, 2009, D.C. Law

17-308, § 2, 56 DCR 27; Mar. 25, 2009, D.C. Law 17-353, § 158(a), 56 DCR 1117.)

Effect of amendments. — D.C. Law 17-308, in subsec. (d)(1), substituted “a report of an adverse event to the system administrator no later than 60 days after its occurrence, or within an earlier time frame if so promulgated by the Board of Medicine.” for “biannual reports on January and July 1 of each calendar year, on adverse events to the system administrator.”

D.C. Law 17-353 validated previously made technical corrections in subsecs. (e)(1) and (f).

Legislative history of Law 16-263. — Law 16-263, the “Medical Malpractice Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-334, which was referred to Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 5, 2006, and December 19, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-619 and transmitted to both Houses of Congress for its review. D.C. Law 16-263 became effective on March 14, 2007.

Legislative history of Law 17-308. — Law 17-308, the “Adverse Event Reporting Requirement Amendment Act of 2008”, was introduced

in Council and assigned Bill No. 17-858 which was referred to the Committee on Health. The Bill was adopted on first and second readings on November 18, 2008, and December 2, 2008, respectively. Signed by the Mayor on December 16, 2008, it was assigned Act No. 17-608 and transmitted to both Houses of Congress for its review. D.C. Law 17-308 became effective on March 20, 2009.

Legislative history of Law 17-353. — Law 17-353, the “Technical Amendments Act of 2008”, was introduced in Council and assigned Bill No. 17-994 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 2, 2008, and December 16, 2008, respectively. Signed by the Mayor on January 15, 2009, it was assigned Act No. 17-687 and transmitted to both Houses of Congress for its review. D.C. Law 17-353 became effective on March 25, 2009.

Delegation of Authority. — Delegation of Authority Pursuant to D.C. Law 16-263, the Medical Malpractice Amendment Act of 2006, see Mayor’s Order 2008-25, February 8, 2008 (55 DCR 2371).

CASE NOTES

ANALYSIS

Construction and application.
Failure to report.

Construction and application.

Under either District of Columbia or Maryland law, there was not close fit between conduct of at-will professional corporation employee, who worked as vascular surgeon, in attempting to expose and reform bad medical practices and District of Columbia statute requiring that health care providers submit reports of adverse medical events to local government, as would support employee’s claim that he was terminated in violation of public policy; employee did not allege that he was terminated for attempting to submit required reports or otherwise take his grievances about patient

care to government authorities. *Lurie v. Mid-Atlantic Permanente Med. Group, P.C.*, 729 F.Supp.2d 304, 2010 U.S. Dist. LEXIS 80078 (2010).

Failure to report.

Under District of Columbia law, medical center’s termination of surgeon who had complained about quality of care issues did not violate public policy, as required to establish common law wrongful discharge claim, despite statute requiring health care providers to report adverse medical events, where surgeon did not externally report or threaten to report his grievances to government authorities. *Lurie v. Mid-Atlantic Permanente Med. Group, P.C.*, 787 F.Supp.2d 54, 2011 U.S. Dist. LEXIS 57626 (2011), appeal dismissed by 2011 U.S. App. LEXIS 23899 (D.C. Cir. Nov. 9, 2011).

Subchapter IV. General Provisions.

§ 7-171. Chief Clerk and Chief Inspector not to act as deputy.

After April 2, 1938, neither the Chief Clerk nor the Chief Inspector of the Department of Human Services of the District of Columbia shall act as a deputy to the Director of the Department of Human Services of said District.

(July 14, 1892, 27 Stat. 162, ch. 171, § 1; April 2, 1938, 52 Stat. 153, ch. 60; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

Prior Codifications. — 1981 Ed., § 6-107.
1973 Ed., § 6-108.

Health abolished: See Historical and Statutory
Notes following § 7-101.

Editor's notes. — Office of Director of Public

§ 7-172. Assistant Director of Public Health to be physician and discharge duties of health officer during his absence or disability.

The Assistant Director of Public Health shall be a physician, and during the absence of or disability of the Director of Public Health shall act as Director of Public Health and discharge the duties incident to that position.

(Mar. 4, 1913, 37 Stat. 961, ch. 150; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

Prior Codifications. — 1981 Ed., § 6-108.
1973 Ed., § 6-109.

Health abolished: See Historical and Statutory
Notes following § 7-101.

Editor's notes. — Office of Director of Public

§ 7-173. Inspector of Fish and Other Marine Products.

The duties and the authority conferred by law upon the Inspector of Fish and Other Marine Products on May 26, 1908, are hereby vested in each of the Sanitary and Food Inspectors.

(May 26, 1908, 35 Stat. 299, ch. 198.)

Prior Codifications. — 1981 Ed., § 6-109.

1973 Ed., § 6-110.

§ 7-174. Certain ordinances of Board of Health legalized — Generally; exceptions.

The ordinances of the late Board of Health of the District of Columbia, as revised, amended, and adopted, November 19, 1875, entitled "An ordinance to revise, consolidate, and amend the ordinances of the Board of Health, to declare what shall be deemed nuisances injurious to health, and to provide for the removal thereof," as printed in the report of said late Board of Health made to the 1st session of the 44th Congress, being Executive Document No. 1, part 8, are hereby legalized; and the respective penalties therein prescribed for violations thereof may be imposed and enforced for the respective offenses therein described, excepting the sections of said ordinance following, namely: Sections 7, 9, and 14, which said sections are not hereby legalized.

(Apr. 24, 1880, 21 Stat. 304, Res. No. 25, § 1.)

Section references. — This section is referred to in §§ 7-175, 7-176, and 7-177.

Prior Codifications. — 1981 Ed., § 6-110.
1973 Ed., § 6-111.

§ 7-175. Certain ordinances of Board of Health legalized — Titles.

The ordinances, rules, and regulations of said late Board of Health contained in the report mentioned in § 7-174 and printed in the said Executive Document therein mentioned, namely:

(1) "An ordinance to amend an ordinance to prevent domestic animals from running at large within the Cities of Washington and Georgetown, passed by the Board of Health May 19, 1871";

(2) "An ordinance to prevent the sale of unwholesome food, in the Cities of Washington and Georgetown";

(3) "An ordinance to provide for the inspection of streets, food, livestock, fish and other marine products, in the Cities of Washington and Georgetown, and to define the duties of Inspectors and other officers of the Board of Health";

(4) "An ordinance to amend § 10 of the Code so as to read";

(5) "An ordinance to amend an ordinance passed May 13, 1873, to read as follows";

(6) "An ordinance to prevent committing or creating nuisances in or about public urinal or urinals located within the Cities of Washington and Georgetown";

(7) "Rules and regulations in regard to smallpox";

(8) Regulations and ordinances cited in paragraphs (1) through (7) of this section are legalized and made valid; and the penalties therein provided respectively for violations thereof, may be imposed and enforced for the violations of the same respectively as provided by § 27 of the ordinances passed November 19, 1875.

(Apr. 24, 1880, 21 Stat. 305, Res. No. 25, § 2; Oct. 8, 1981, D.C. Law 4-34, § 29(b), 28 DCR 3271.)

Section references. — This section is referred to in §§ 7-175 and 7-177.

Prior Codifications. — 1981 Ed., § 6-111.
1973 Ed., § 6-112.

Legislative history of Law 4-34. — For legislative history of D.C. Law 4-34, see Historical and Statutory Notes following § 7-102.

§ 7-176. Certain ordinances of Board of Health legalized — Force and effect; exemptions from enforcement; alternative sanctions; adjudication of infractions.

Except as provided in § 7-175, the ordinances of the late Board of Health of the District of Columbia, as legalized by §§ 7-174 and 7-175, are hereby declared to have the same force and effect within the District of Columbia as if enacted by Congress in the 1st instance, and the powers and duties imposed upon the late Board of Health, in and by the said ordinances, are hereby conferred upon the Director of the Department of Human Services of said District, and all prosecutions for violations of said ordinances and regulations shall be in the Superior Court of the District of Columbia in the name of the said District; provided, that said regulations shall not be enforced against

industries established on Aug. 7, 1894, which are not a nuisance in fact. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infractions of the late Board of Health of the District of Columbia, as legalized by §§ 7-174 and 7-175, or any rules or regulations issued under the authority of those sections, pursuant to Chapter 18 of Title 2. Adjudication of any infraction shall be pursuant to Chapter 18 of Title 2.

(Aug. 7, 1894, 28 Stat. 257, ch. 232; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); Oct. 5, 1985, D.C. Law 6-42, § 478, 32 DCR 4450.)

Prior Codifications. — 1981 Ed., § 6-112. 1973 Ed., § 6-113.

Legislative history of Law 6-42. — Law 6-42, the “Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985,” was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was

adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

Editor’s notes. — Office of Director of Public Health abolished: See Historical and Statutory Notes following § 7-101.

§ 7-177. Certain ordinances of Board of Health legalized — Alteration, amendment, or repeal.

The Council of the District of Columbia is hereby authorized and empowered, in making regulations under the authority conferred by Congress, to alter, amend, or repeal any of the ordinances of the late Board of Health of said District which were legalized by §§ 7-174 and 7-175, whenever in its judgment the public interest requires it.

(Feb. 28, 1889, 30 Stat. 1390, Joint Res. No. 21.)

Prior Codifications. — 1981 Ed., § 6-113. 1973 Ed., § 6-114.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(133) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commis-

sioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

ANALYSIS

Abatement of nuisances.
Administrative inspections and searches.
Power to make regulations.

Validity of regulations.

Abatement of nuisances.

Where a regulation provides for abatement of a health nuisance only after notice and hearing,

a health officer cannot inspect, when challenged, without the usual preliminary steps for search. *Little v. District of Columbia*, 62 A.2d 874, 1948 D.C. App. LEXIS 237 (Cr.App. 1948).

Administrative inspections and searches.

Action of health officer in attempting pursuant to a local health regulation to inspect defendant's home without a warrant, based on a complaint respecting an accumulation of garbage and trash in halls of the home constituted unlawful search of a private dwelling in contravention of the Fourth Amendment precluding conviction for resisting an officer since the conditions which were the object of the inspection did not amount to an immediate danger or a dangerous nuisance per se. *U.S. Const. Amend. 4. Little v. District of Columbia*, 62 A.2d 874, 1948 D.C. App. LEXIS 237 (Cr.App. 1948).

Power to make regulations.

Generally, health laws and ordinances are accorded liberal construction because their exercise is largely discretionary. *Little v. District of Columbia*, 62 A.2d 874, 1948 D.C. App. LEXIS 237 (Cr.App. 1948).

Generally, public authorities may employ all necessary means to protect public health and in so doing may provide for inspection of premises as a health measure. *Little v. District of Columbia*, 62 A.2d 874, 1948 D.C. App. LEXIS 237 (Cr.App. 1948).

It is within the police power of a municipal corporation to control and regulate the manner of collection and disposition of garbage, refuse, or filth, but such regulations must not unduly infringe upon individual rights. *Little v. District of Columbia*, 62 A.2d 874, 1948 D.C. App. LEXIS 237 (Cr.App. 1948).

Validity of regulations.

Municipal regulations which protect the public health, prevent nuisances and the like, applicable by terms and practice to conditions infringing upon the public interest are valid. *District of Columbia v. Little*, 178 F.2d 13, 1949 U.S. App. LEXIS 2477 (C.A.D.C. 1949).

When health laws and ordinances appear to violate a constitutional right, the courts must carefully weigh the value of the end accomplished against the restrictions suffered. *Little v. District of Columbia*, 62 A.2d 874, 1948 D.C. App. LEXIS 237 (Cr.App. 1948).

§ 7-178. Reception, burial, and identification of ashes of certain cremated indigent persons.

The Director of the Department of Human Services is authorized to provide and furnish proper containers for the reception, burial, and identification of the ashes of all human bodies of indigent persons that are cremated at the public crematorium, which ashes remain unclaimed after 12 months from date of such cremation.

(May 21, 1928, 45 Stat. 669, ch. 659; July 3, 1930, 46 Stat. 975, ch. 848; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

Prior Codifications. — 1981 Ed., § 6-114.
1973 Ed., § 6-115.

Editor's notes. — Office of Director of Public

Health abolished: See Historical and Statutory Notes following § 7-101.

§ 7-179. Dairy Inspector may act as Inspector of Livestock.

Any Inspector of Dairies and Dairy Farms may act as Inspector of Livestock when directed by the Director of the Department of Human Services.

(Mar. 2, 1911, 36 Stat. 993, ch. 192; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1.)

Prior Codifications. — 1981 Ed., § 6-115.
1973 Ed., § 6-116.

Editor's notes. — Office of Director of Public

Health abolished: See Historical and Statutory Notes following § 7-101.

§ 7-180. Tuberculosis Sanatoria and District of Columbia General Hospital.

The following hospital and sanatoria, on and after July 1, 1937, shall be under the direction and control of the Department of Human Services of the District of Columbia and subject to the supervision of the Mayor of the District of Columbia: Tuberculosis Sanatoria and District of Columbia General Hospital.

(June 29, 1937, 50 Stat. 376, ch. 403, § 1.)

Prior Codifications. — 1981 Ed., § 6-116.
1973 Ed., § 6-117.

Emergency legislation. — For temporary (90 day) amendment of section, see § 3 of the District of Columbia Health and Hospitals Public Benefit Corporation Emergency Amendment Act of 2000 (D.C. Act 13-454, November 7, 2000, 47 DCR 9413).

Editor's notes. — Health Department abolished: The Health Department of the District of Columbia, including the office of the head thereof, was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 57 of the Board of Commissioners, dated June 30, 1953, and Reorganization Order No. 52, dated June 30, 1953, combined and redesignated Organization Order No. 141, dated February 11, 1964, established under the direction and control of a Commissioner, a Department of Public Health headed by a Director, for the purpose of planning, implementing, and directing public health and hospital care programs, and for performing certain other allied medical and paramedical functions. The Anatomical Board was established under the direction and control of the Director of Public Health consisting of members as prescribed in the D.C. Code. Prior to redesignation, the Order abolished the previously existing Health Department, Gallinger Hospital, Glenn Dale Sanatorium, and the Anatomical Board, and transferred their functions and positions to the new Department. The organization of the new Department was set out in the Order. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions stated in Organization Order No. 141 were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by Reorganization Plan No. 2 of 1979, dated February 21, 1980, which Plan established the Department of Human Services.

Tuberculosis Hospital and Gallinger Municipal Hospital abolished: The Tuberculosis Hospital and Gallinger Municipal Hospital were abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 57 as amended, redesignated as Organization Order No. 141 and amended, established under the direction and control of a Commissioner, a Department of Public Health headed by a Director, for the purpose of planning, implementing, and directing public health and hospital care programs, and for performing certain other allied medical functions. Prior to its redesignation, the Order abolished the previously existing Gallinger Municipal Hospital and transferred all of its positions and functions to the new Department. It further provided that within the Department, the District of Columbia General Hospital would perform all functions previously performed by Gallinger Municipal Hospital. Functions of the Department of Public Health as set forth in Organization Order No. 141 were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by Reorganization Plan No. 2 of 1979, dated February 21, 1980, which Plan established the Department of Human Services.

Revision of chapter: D.C. Law 4-34 repealed former Chapter 2, containing §§ 6-201 to 6-204 1981 Ed., and enacted present Chapter 2 of former Title 6, containing §§ 7-201 to 7-228 2001 Edition, in lieu thereof.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced

by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CASE NOTES

In general.

District of Columbia in expending public moneys for public purpose in connection with treatment of patient for tuberculosis was asserting public right in attempting to recover that amount, though suit was based on contract to pay for the services. D.C. Code §§ 6-117, 32-310. *District of Columbia v. Weiss*, 263 A.2d 638, 1970 D.C. App. LEXIS 253 (App. 1970).

Consideration that paying patients might be

admitted to public hospital, operated to provide medical assistance to persons suffering from communicable diseases, when such admissions would not interfere with admission of indigent patients, did not change nature of operation of hospital and did not furnish basis for application of statute of limitations to action on contract to pay for hospital services. *District of Columbia v. Weiss*, 263 A.2d 638, 1970 D.C. App. LEXIS 253 (App. 1970).

CHAPTER 2. VITAL RECORDS.

| Sec. | Sec. |
|--|---|
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| 7-207. Delayed filing and registration of birth. | 7-222. Persons required to keep records. |
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| 7-209. Adoption forms. | 7-224. Matching birth and death certificates. |
| 7-210. New certificates of birth. | 7-225. Penalties. |
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| 7-212. Delayed filing and registration of death. | 7-227. Severability. |
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| 7-214. Final disposition of dead body or fetus. | |

§ 7-201. Definitions.

Unless otherwise specified as used in this chapter, the term:

(1) "Court" means the Superior Court of the District of Columbia established by § 11-901.

(2) "Day" means calendar day.

(3) "Dead body" means a human body or such parts of such human body from the condition of which it may be reasonably concluded that death recently occurred.

(4) "District" means within the geographical boundaries of the District of Columbia.

(4A) "Domestic partner" shall have the same meaning as provided in § 32-701(3), but shall exclude a domestic partner who is the parent, grandparent, sibling, child, grandchild, niece, nephew, aunt, or uncle of a woman who gives birth to a child.

(4B) "Domestic partnership" shall have the same meaning as provided in § 32-701(4), but shall exclude a domestic partnership where a domestic partner is the parent, grandparent, sibling, child, grandchild, niece, nephew, aunt, or uncle of a woman who gives birth to a child.

(4C) "Expected death" means a death from a previously diagnosed illness with a prognosis of death in less than 6 months.

(5) "Fetal death" means death prior to the complete expulsion or extraction from its mother of a product of a human conception, irrespective of the duration of pregnancy. The death is indicated by the fact that after such expulsion or extraction the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles. The term "fetal death" does not include an induced termination of pregnancy.

(6) "File" means the presentation of a vital record for registration.

(7) "Final disposition" means the burial, interment, cremation, removal from the District, or other authorized disposition of a dead body or fetus.

(7A) "IV-D agency" means the organizational unit of the District govern-

ment, or any successor organizational unit, that is responsible for administering or supervising the administration of the District's State Plan under title IV, part D, of the Social Security Act, approved January 4, 1975 (88 Stat. 2351; 42 U.S.C. § 651 et seq.), pertaining to parent locator services, paternity establishment, and the establishment, modification, and enforcement of support orders.

(8) "Institution" means any establishment, public or private, which provides inpatient medical, surgical, or diagnostic care or treatment, or nursing, custodial, or domiciliary care, or to which persons are committed by law.

(9) "Live birth" means the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy, which, after such expulsion or extraction, breathes, or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached.

(10) "Person" means an individual, a trust, an estate, a partnership, a corporation (including associations, joint stock companies, and insurance companies), the District government, or an agency or instrumentality of the District government.

(11) "Physician" means an individual authorized to practice medicine or osteopathy in the District.

(12) "Registrar" means the person appointed by the Director of the Department of Health to administer the system of vital records for the District government under this chapter.

(13) "Registration" or "register" means the acceptance of vital records by the Registrar and the incorporation of vital records provided for in this chapter into his or her official records.

(14) "System of vital records" means the registration, collection, preservation, amendment, and certification of vital records, the collection of other reports required by this chapter, and activities related thereto.

(15) "Vital records" means certificates or reports of birth, death, marriage, divorce, annulment, and data related thereto which is permitted to be gathered under this chapter.

(16) "Vital statistics" means the data derived from certificates and reports of birth, death, fetal death, marriage, divorce, annulment, and related reports.

(Oct. 8, 1981, D.C. Law 4-34, § 2, 28 DCR 3271; Mar. 13, 1992, D.C. Law 9-180, § 2(a), 39 DCR 8078; Apr. 3, 2001, D.C. Law 13-269, § 104(a), 48 DCR 1270; Apr. 11, 2003, D.C. Law 14-299, § 2(a), 50 DCR 388; July 18, 2008, D.C. Law 18-33, § 2(a), 56 DCR 4269.)

Prior Codifications. — 1981 Ed., § 6-201.

Effect of amendments. — D.C. Law 13-269 added par. (7A).

D.C. Law 14-299, in par. (12), substituted "Department of Health" for "Department of Human Services".

D.C. Law 18-33 redesignated former par. (4A) as (4C); and added pars. (4A) and (4B).

Temporary Amendment of Section. —

For temporary (225 day) amendment of section, see § 3(a) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-103, May 8, 1998, law notification 45 DCR 3254).

For temporary (225 day) amendment of section, see § 3(a) of Child Support and Welfare

Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) amendment of section, see § 103(a) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) amendment of section, see § 103(a) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

Temporary Addition of Section. — For temporary (225 day) additions, see §§ 2, 3 of Tobacco Settlement Model Temporary Act of 1999 (D.C. Law 13-45, October 20, 1999, law notification 46 DCR 8865).

Emergency legislation. — For temporary amendment of section, see § 3(a) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

For temporary amendment of section, see § 3(a) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 3(a) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 3(a) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 3(a) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary repeal of D.C. Law 12-103, see § 13 of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110).

For temporary (90-day) amendment of section, see § 103(a) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 103(a) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) amendment of section, see § 103(a) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) amendment of section, see § 103(a) of the Child Support and Welfare Reform Compliance Emergency

Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) amendment of section, see § 104(a) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

Legislative history of Law 4-34. — Law 4-34, the "Vital Records Act of 1981," was introduced in Council and assigned Bill No. 4-161, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 16, 1981, and June 30, 1981, respectively. Signed by the Mayor on July 20, 1981, it was assigned Act No. 4-58 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-180. — Law 9-180, the "Medical Cause of Death Privacy and Expected Death at Home Vital Records and Kenilworth-Parkside Equitable Water and Sewer Service Relief Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-275, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on July 7, 1992, and October 6, 1992, respectively. Signed by the Mayor on October 23, 1992, it was assigned Act No. 9-299 and transmitted to both Houses of Congress for its review. D.C. Law 9-180 became effective on March 13, 1993.

Legislative history of Law 13-269. — Law 13-269, the "Child Support and Welfare Reform Compliance Amendment Act of 2000", was introduced in Council and assigned Bill No. 13-254, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 8, 2000, and December 5, 2000, respectively. Signed by the Mayor on January 8, 2001, it was assigned Act No. 13-559 and transmitted to both Houses of Congress for its review. D.C. Law 13-269 became effective on April 3, 2001.

Legislative history of Law 14-299. — Law 14-299, the "Surname Choice Amendment Act of 2002", was introduced in Council and assigned Bill No. 14-715, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 7, 2002, and December 3, 2002, respectively. Signed by the Mayor on December 27, 2002, it was assigned Act No. 14-575 and transmitted to both Houses of Congress for its review. D.C. Law 14-299 became effective on April 11, 2003.

Legislative history of Law 18-33. — Law 18-33, the "Domestic Partnership Judicial Determination of Parentage Amendment Act of 2009", was introduced in Council and assigned Bill No. 18-66, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on April 7, 2009, and May 5, 2009, respectively.

Signed by the Mayor on May 21, 2008, it was assigned Act No. 18-66 and transmitted to both Houses of Congress for its review. D.C. Law 18-33 became effective on July 18, 2008.

§ 7-202. Vital records system established.

The Mayor shall establish a vital records system consistent with this chapter for the reporting, maintenance, issuance, and confidentiality of vital records.

(Oct. 8, 1981, D.C. Law 4-34, § 3, 28 DCR 3271.)

Section references. — This section is referred to in § 7-228.

Prior Codifications. — 1981 Ed., § 6-202.

Legislative history of Law 4-34. — For legislative history of D.C. Law 4-34, see Historical and Statutory Notes following § 7-201.

§ 7-203. Appointment and duties of Registrar.

The Director of the Department of Health shall appoint the Registrar who shall:

(1) Be in charge of administering the vital records system and be the custodian of its records; and

(2) Develop and distribute forms or other means for transmitting data to carry out the reporting and registration purposes of this chapter.

(Oct. 8, 1981, D.C. Law 4-34, § 4, 28 DCR 3271; Apr. 11, 2003, D.C. Law 14-299, § 2(b), 50 DCR 388.)

Section references. — This section is referred to in § 7-228.

Prior Codifications. — 1981 Ed., § 6-203.

Effect of amendments. — D.C. Law 14-299 substituted "Department of Health" for "Department of Human Services".

Legislative history of Law 4-34. — For legislative history of D.C. Law 4-34, see Historical and Statutory Notes following § 7-201.

Legislative history of Law 14-299. — For Law 14-299, see notes following § 7-201.

§ 7-204. General requirements.

(a) Each certificate, record, report, and other document required by this chapter shall be on a form or in a format prescribed by the Registrar.

(b) Each vital record shall contain the date of registration.

(c) Information required in a certificate or report may be filed and registered by photographic, electronic, or other means as prescribed by the Registrar.

(d) Each form may include each item recommended by the federal agency responsible for national vital statistics.

(Oct. 8, 1981, D.C. Law 4-34, § 5, 28 DCR 3271.)

Prior Codifications. — 1981 Ed., § 6-204.

Legislative history of Law 4-34. — For

legislative history of D.C. Law 4-34, see Historical and Statutory Notes following § 7-201.

§ 7-205. Birth registration.

(a) A certificate of birth for each live birth which occurs in the District shall be filed as directed by the Registrar, within 5 days after such birth, and shall be registered if it has been completed and filed in accordance with this chapter.

(b) When a birth occurs in or en route to an institution the person in charge

of the institution or his or her designee shall collect the personal data, prepare the certificate, secure the signatures required, and file the certificate. The physician or other person in attendance at or immediately after the birth shall provide the medical information required in the certificate and certify to the facts of birth within 72 hours after the birth. If the physician, or other person in attendance at or immediately after the birth, does not certify to the facts of birth within the 72-hour period, the person in charge of the institution or his or her designee shall certify to the facts of birth and complete the certificate.

(c) When a birth occurs outside an institution, the certificate shall be prepared and filed by one of the following persons in the indicated order of priority:

(1) The physician in attendance at the time of birth or in attendance immediately after the birth;

(2) Any other person in attendance at the time of birth or in attendance immediately after the birth; or

(3) The mother, the father, the spouse or domestic partner of the mother, or, in the absence of the father or the spouse or domestic partner of the mother, and the inability of the mother, the person in charge of the premises where the birth occurred.

(d) When a birth occurs on a moving conveyance within the United States and the child is first removed from the conveyance in the District, the birth shall be registered in the District, and the place where it is first removed shall be considered the place of birth. When a birth occurs on a moving conveyance while in international waters, air space, in a foreign country or its air space, and the child is first removed from the conveyance in the District, the birth shall be registered in the District, but the certificate shall show the actual place of birth insofar as can be determined.

(e) For the purposes of preparation and filing a birth certificate the following rules apply:

(1) The certificate shall include the name of the mother of the child;

(2) If the mother was married at the time of either conception or birth, or between conception and birth, the name of the spouse shall be entered on the certificate as a parent of the child, unless parentage has been determined otherwise by the Court pursuant to § 16-909;

(2A) If the mother was in a domestic partnership at the time of either conception or birth, or between conception and birth, the name of the domestic partner of the mother shall be entered on the certificate as a parent of the child, unless parentage has been determined otherwise by the Court pursuant to § 16-909;

(3) If the mother was not married or in a domestic partnership at the time of either conception or birth, or between conception and birth, the name of the other parent shall only be entered on the certificate if:

(A) The parents have signed a voluntary acknowledgment of paternity pursuant to § 16-909.1(a)(1) or pursuant to the laws and procedures of another state in which the voluntary acknowledgment was signed;

(B) The parents have signed a consent to parent a child born by artificial insemination pursuant to § 16-909(e) and paragraph (3A) of this subsection; or

(C) A court or administrative agency of competent jurisdiction has adjudicated as the other parent the person to be named as the other parent on the certificate.

(3A) For the purposes of the certificate, the consent to parent a child born by artificial insemination pursuant to § 16-909(e) shall be on a form prescribed and furnished by the Registrar that:

(A) Acknowledges consent by the mother and the intended parent to the insemination with the intent to be a parent of the child:

(B) Is signed under oath (which may include signature in the presence of a notary);

(C) Includes written notice that legal consequences, rights, and responsibilities as a parent arise from signing the consent; and

(D) Contains the full names, social security numbers, and dates of birth of the parents and child, the addresses of the parents, the birthplace of the child, and a statement indicating that both parents understand the rights, responsibilities, and consequences of signing the affidavit;

(4) If the father is not named on the certificate of birth, no other information about the father shall be entered on the certificate; and

(5) The surname of the child shall be the surname of a parent whose name appears on the child's birth certificate, or both surnames recorded in any order or in hyphenated or unhyphenated form, or any surname to which either parent has a familial connection. If the chosen surname is not that of a parent, or a combination of all or part of both surnames, either or both parents shall provide an affidavit stating that the chosen surname was or is the surname of a past or current relative or has some other clearly stated familial connection. Submission of an affidavit containing false information shall be punishable under § 7-225.

(f) Either of the parents of the child, or other informant, shall confirm with his or her signature the accuracy of the personal data entered on the certificate before the certificate is filed.

(Oct. 8, 1981, D.C. Law 4-34, § 6, 28 DCR 3271; Apr. 3, 2001, D.C. Law 13-269, § 104(b), 48 DCR 1270; Apr. 11, 2003, D.C. Law 14-299, § 2(c), 50 DCR 388; July 18, 2008, D.C. Law 18-33, § 2(b), 56 DCR 4269.)

Section references. — This section is referred to in §§ 7-207 and 7-213.

Prior Codifications. — 1981 Ed., § 6-205.

Effect of amendments. — D.C. Law 13-269 rewrote sub par. (e)(3), which formerly read:

"(3) If the mother was not married at the time of either conception or birth or between conception and birth, the name of the father shall only be entered on the certificate with the written consent of the mother and the person to be named as the father, in which case, upon written request to the Registrar by both parents, the surname of the child shall be entered on the certificate as that of the father;"

D.C. Law 14-299, in subsec. (e)(3), substituted "certificate;" for "certificate. In such cases, upon written request to the Registrar by

both parents, the surname of the child shall be entered on the certificate as that of the father;" and added subsec. (e)(5).

D.C. Law 18-33 rewrote subsecs. (c)(3), (e)(3), and (e)(5); in subsec. (e)(2), substituted "spouse" for "husband" and substituted "a parent" for "the father"; and added pars. (e)(2A) and (3A).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3(b) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-103, May 8, 1998, law notification 45 DCR 3254).

For temporary (225 day) amendment of section, see § 3(b) of Child Support and Welfare Reform Compliance Temporary Amendment

Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) amendment of section, see § 103(b) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) amendment of section, see § 103(b) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

Emergency legislation. — For temporary amendment of section, see § 3(b) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

For temporary amendment of section, see § 3(b) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 3(b) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 3(b) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 3(b) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary repeal of D.C. Law 12-103, see § 13 of the Child Support and Welfare Reform Compliance Second Emergency Amendment

Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110).

For temporary (90-day) amendment of section, see § 103(b) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 103(b) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) amendment of section, see § 103(b) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) amendment of section, see § 103(b) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) amendment of section, see § 104(b) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

Legislative history of Law 4-34. — For legislative history of D.C. Law 4-34, see Historical and Statutory Notes following § 7-201.

Legislative history of Law 13-269. — For D.C. Law 13-269, see notes following § 7-201.

Legislative history of Law 14-299. — For Law 14-299, see notes following § 7-201.

Legislative history of Law 18-33. — For Law 18-33, see notes following § 7-201.

§ 7-205.01. Social Security numbers.

(a) A person required to prepare and file a certificate of birth shall provide on a form separate from the certificate of birth, the Social Security account number or numbers of each parent, if the parent has more than 1 Social Security account number. The Social Security account number shall not be recorded on the certificate of birth.

(b) The social security account number shall be collected by the Registrar and made available only to the IV-D agency for the establishment, modification, and enforcement of support orders. A social security account number shall not be available for any other purpose.

(Oct. 8, 1981, D.C. Law 4-34, § 6a, as added July 25, 1990, D.C. Law 8-150, § 5, 37 DCR 3720; Apr. 3, 2001, D.C. Law 13-269, § 105, 48 DCR 1270.)

Prior Codifications. — 1981 Ed., § 6-205.1.

Effect of amendments. — D.C. Law 13-269 rewrote subsec. (b) which formerly read:

“(b) The Social Security account number shall be collected by the Register of Vital Records and made available only to the Depart-

ment of Human Services Office of Paternity and Child Support Enforcement, and the Child Support Section of the Civil Division of the Office of the Corporation Counsel for the enforcement of child support orders. A Social Security account number shall not be available for any other purpose.”

Temporary Amendment of Section. —

For temporary (225 day) amendment of section, see § 4 of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-103, May 8, 1998, law notification 45 DCR 3254).

For temporary (225 day) amendment of section, see § 4 of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) amendment of section, see § 104 of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) amendment of section, see § 104 of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

Emergency legislation. — For temporary amendment of section, see § 4 of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

For temporary amendment of section, see § 4 of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 4 of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 4 of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 4 of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary repeal of D.C. Law 12-103, see § 13 of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110).

For temporary (90-day) amendment of section, see § 104 of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 104 of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) amendment of section, see § 104 of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) amendment of section, see § 104 of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) amendment of section, see § 105 of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

Legislative history of Law 8-150. — Law 8-150, the "Child Support Guideline Amendment Act of 1990," was introduced in Council and assigned Bill No. 8-461, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 1, 1990, and May 15, 1990, respectively. Signed by the Mayor on May 30, 1990, it was assigned Act No. 8-208 and transmitted to both Houses of Congress for its review.

Legislative history of Law 13-269. — For D.C. Law 13-269, see notes following § 7-201.

§ 7-206. Infants of unknown parentage.

(a) A person who assumes legal custody of a live born infant of unknown parentage shall report the following information to the Registrar, within 5 days after taking custody:

- (1) Date and place child was found;
- (2) Sex, race, and approximate birth date of child;
- (3) Name and address of the person or institution with whom the child has been placed for care;
- (4) Name given to the child by the custodian of the child; and
- (5) Any other data required by the Registrar.

(b) The place where the child was found shall be entered as the place of birth.

(c) A report registered under this section shall constitute the certificate of birth for the child.

(d) If the child is identified and a certificate of birth is obtained, the report registered under this section shall be sealed and placed in a special file and shall not be subject to inspection except upon order of the Court (or as provided by regulation).

(Oct. 8, 1981, D.C. Law 4-34, § 7, 28 DCR 3271.)

Prior Codifications. — 1981 Ed., § 6-206. legislative history of D.C. Law 4-34, see Historical and Statutory Notes following § 7-201.
Legislative history of Law 4-34. — For

§ 7-207. Delayed filing and registration of birth.

(a) A certificate of birth may be filed after the 5-day period specified in § 7-205 if the person or institution filing the certificate meets the filing and registration requirements imposed by this section. The Registrar shall prescribe by regulation evidentiary requirements to substantiate facts of birth for those certificates filed and registered after the 5-day period.

(b) A certificate of birth registered 1 year or more after the date of birth shall be marked “delayed” and show the date of the delayed registration on the face of the certificate.

(c) A written summary statement of the evidence submitted in support of the delayed registration shall be made by the Registrar on the certificate. Both the registrant and the Registrar shall sign the certificate and have the signatures notarized.

(d)(1) When an applicant does not submit the minimum documentation required in the regulations for delayed registration or when the Registrar has reasonable cause to question the validity or adequacy of the applicant’s sworn statement or the documentary evidence, and if the deficiencies are not corrected, the Registrar shall not register the delayed certificate of birth. The Registrar shall state in writing to the applicant the reason for this action. Upon the Registrar’s refusal to register, the registrant shall have a cause of action in the Court to establish the date and place of birth and the parentage of the person whose birth is to be registered. The Registrar shall give the registrant written notice of this right.

(2) The Registrar may by regulation provide for the dismissal of an application which is not actively pursued.

(Oct. 8, 1981, D.C. Law 4-34, § 8, 28 DCR 3271.)

Section references. — This section is referred to in §§ 7-208 and 7-210.

Legislative history of Law 4-34. — For legislative history of D.C. Law 4-34, see Historical and Statutory Notes following § 7-201.

Prior Codifications. — 1981 Ed., § 6-207.

§ 7-208. Judicial procedure to establish facts of birth.

(a) If a delayed certificate of birth is rejected under § 7-207, a complaint signed and sworn to by the petitioner may be filed with the Court for an order establishing a record of the date and place of the birth and the parentage of the person whose birth is to be registered. A complaint filed under this section shall be governed by the Rules of the Superior Court of the District of Columbia.

(b) Such petition shall allege:

(1) That the person for whom a delayed certificate of birth is sought was born in the District;

(2) That no certificate of birth of such person can be found in the District government vital records system;

(3) That despite diligent efforts by the petitioner, he or she was unable to obtain the evidence required by this chapter and regulations issued pursuant to this chapter;

(4) That the Registrar has refused to register a delayed certificate of birth; and

(5) Any other information needed to establish the facts of birth.

(c) The petition shall be accompanied by a statement of the Registrar made in accordance with § 7-207 and all documentary evidence which was submitted to the Registrar in support of such registration.

(d) The Court shall issue an order to establish a certificate of birth if the Court finds, that the person for whom a delayed certificate of birth is sought was born in the District. The Court shall make findings as to the place and date of birth, parentage, and such other findings as may be required. The order shall include the birth data to be registered, a description of the evidence presented, and the date of the Court's action.

(e) The Court shall forward a certified copy of such order to the Registrar not later than the 10th day of the month following the month during which it was entered. The certified copy of the order shall cause the Registrar to execute a certificate of birth.

(Oct. 8, 1981, D.C. Law 4-34, § 9, 28 DCR 3271.)

Section references. — This section is referred to in § 7-210.

Prior Codifications. — 1981 Ed., § 6-208.

Legislative history of Law 4-34. — For legislative history of D.C. Law 4-34, see Historical and Statutory Notes following § 7-201.

§ 7-209. Adoption forms.

(a) The Court shall cause to be prepared an adoption form for each adoption decreed by the Court. The form shall:

(1) State facts necessary to locate and identify the original certificate of birth of the adoptee;

(2) Provide only such information as is necessary to establish a new certificate of birth for the adoptee;

(3) Identify the adoption order; and

(4) Be certified by the Court.

(b) The petitioner for adoption or his or her attorney shall supply the information required by the Court to prepare an adoption form in format prescribed and furnished by the Registrar. The Department of Health or any person having knowledge of the facts shall supply the Court with any additional information necessary to complete the adoption form.

(c) The Court shall prepare an adoption form whenever an adoption decree is amended or invalidated. The adoption form shall identify the original

adoption form and shall include any additional facts in the adoption decree necessary to properly amend the birth record.

(d) The Court shall forward to the Registrar adoption forms concerning decrees of adoption, invalidation of adoption, and amendments of decrees of adoption which were entered in the preceding month, together with such related reports as the Registrar may require no later than the final day of each calendar month.

(e) The Registrar shall forward any adoption form and certified copy of a Court decree concerning any invalidation of adoption or amendment of a decree of adoption for persons born outside the District that he or she receives to the Registrar in the state of the person's birth. If the birth occurred in a foreign country, the adoption form and decree shall be returned to the attorney or agency handling the adoption for submission to the appropriate federal agency.

(Oct. 8, 1981, D.C. Law 4-34, § 10, 28 DCR 3271; Apr. 11, 2003, D.C. Law 14-299, § 2(d), 50 DCR 388.)

Section references. — This section is referred to in § 7-210.

Prior Codifications. — 1981 Ed., § 6-209.

Effect of amendments. — D.C. Law 14-299, in subsec. (b), substituted "Department of Health" for "Department of Human Services".

Legislative history of Law 4-34. — For legislative history of D.C. Law 4-34, see Historical and Statutory Notes following § 7-201.

Legislative history of Law 14-299. — For Law 14-299, see notes following § 7-201.

§ 7-210. New certificates of birth.

(a) The Registrar shall establish a new certificate of birth for a person born in the District, upon receipt of one of the following documents:

- (1) An adoption form prepared according to § 7-209;
- (2) An adoption form prepared and filed according to the laws of a state or foreign country;
- (3) A certified copy of an order issued by the Court determining the parentage of such a person; or
- (4) A written acknowledgement of parentage of the person, pursuant to § 16-2345.

(a-1)(1) The Registrar shall establish a new certificate of birth for an adoptee born outside of the United States upon receipt of a request of the adoptive parent or the adoptee, if the adoptee is 18 years of age or older, and receipt of either:

- (A) An adoption form prepared according to § 7-209; or
- (B)(i) A copy of the foreign adoption decree;
- (ii) A certified translation of the foreign adoption decree; or if birth information is not already included in the foreign adoption decree, evidence as to the child's birth date and birthplace, which may be evidenced by:
 - (I) An original birth certificate;
 - (II) A post-adoption birth certificate issued by the foreign jurisdiction, including a certified copy, extract, or translation; or
 - (III) Other equivalent document, such as a record of the U.S. Citizenship and Immigration Services or the U.S. Department of State; and

(iii) Evidence of IR-3 immigrant visa status, or successor immigrant visa status, for the child by the U.S. Citizenship and Immigration Services.

(2) Following review by the Registrar, all adoption documents issued by the foreign jurisdiction shall be returned to the adoptive parent or adoptee, whichever is applicable.

(3) Subsections (f) and (g) of this section shall not apply to this subsection.

(b) The Registrar shall not establish a new certificate of birth if so requested by the adoptive parents pursuant to § 16-314(a).

(c) The actual place and date of birth shall be shown on a new certificate of birth. The new certificate shall be substituted for the original certificate of birth in the files. The new certificate shall nowhere on its face show that parentage has been established by judicial process or by acknowledgement. The original certificate of birth and the evidence of adoption, parentage determination, or parentage acknowledgement shall not be subject to inspection; except, that:

(1) By the Registrar only for the purpose of properly administering the vital statistics program under this chapter; or

(2) Upon order of the Court.

(d) A certificate of birth shall be amended upon receipt of an adoption form concerning an amended decree of adoption. The Registrar shall issue regulations to govern amendment of certificates of birth.

(e) The Registrar shall restore the original certificate of birth to its place in the files upon receipt of the report or decree of invalidation of adoption. The new certificate and evidence shall not be subject to inspection except upon order of the Court or as provided by regulations implementing this chapter.

(f) If no certificate of birth is on file for the person for whom a new birth certificate is to be established under this section, and the date and place of birth have not been determined in the adoption or parentage proceedings, a delayed certificate of birth shall be filed with the Registrar under § 7-207 or § 7-208 before a new certificate of birth is established. The new birth certificate shall be prepared on the delayed birth certificate form.

(g) Each copy of the original certificate of birth shall be sealed from inspection when a new certificate of birth is established.

(Oct. 8, 1981, D.C. Law 4-34, § 11, 28 DCR 3271; May 21, 1992, D.C. Law 9-101, § 3, 39 DCR 2146; Mar. 2, 2007, D.C. Law 16-191, § 32, 53 DCR 6794; Sept. 24, 2010, D.C. Law 18-230, § 602, 57 DCR 6951.)

Prior Codifications. — 1981 Ed., § 6-210.

Effect of amendments. — D.C. Law 16-191, in subsec. (a)(4), deleted “or § 46-720” from the end.

D.C. Law 18-230 rewrote subsec. (a-1).

Legislative history of Law 4-34. — For legislative history of D.C. Law 4-34, see Historical and Statutory Notes following § 7-201.

Legislative history of Law 9-101. — Law 9-101, the “Vital Records Adoptive Birth Registration Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-192, which was referred to the Committee on Hu-

man Services. The Bill was adopted on first and second readings on February 4, 1992, and March 3, 1992, respectively. Signed by the Mayor on March 23, 1992, it was assigned Act No. 9-173 and transmitted to both Houses of Congress for its review. D.C. Law 9-101 became effective on May 21, 1992.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 7-103.

Legislative history of Law 18-230. — Law 18-230, the “Adoption Reform Act of 2010,” was introduced in Council and assigned Bill No. 18-547, which was referred to the Committee

on Human Services. The Bill was adopted on first and second readings on June 1, 2010, and June 15, 2010, respectively. Signed by the Mayor on July 12, 2010, it was assigned Act No.

18-547 and transmitted to both Houses of Congress for its review. D.C. Law 18-230 became effective on September 24, 2010.

§ 7-211. Death registration.

(a) The funeral director or person acting as such who first takes custody of the dead body shall file a certificate of death. He or she shall obtain the personal data from the next of kin or the best qualified person or source available and obtain the medical certificate required under this section.

(b) A certificate of death for each death which occurs in the District shall be filed as directed by the Registrar within 5 days after death and before final disposition. The certificate shall be registered if it has been completed and filed according to this chapter.

(c) If the place of death is unknown but the dead body is found in the District, the certificate of death shall be completed and filed in the District. The place where the body is found shall be shown as the place of death. If the date of death is unknown, it shall be determined by approximation.

(d) When death occurs on a moving conveyance in the United States and the body is first removed from the conveyance in the District, the death shall be registered in the District and the place where it is first removed shall be considered the place of death. When a death occurs on a moving conveyance while in international waters or air space, or in a foreign country or its air space and the body is first removed from the conveyance in the District, the death shall be registered in the District, but the certificate shall show the actual place of death insofar as can be determined.

(e) Within 48 hours after death, the physician in charge of a patient's care for the condition which resulted in death shall complete, sign, and return the medical certification portion of the death certificate to the funeral director, except when inquiry is required by the Office of the Chief Medical Examiner. In the absence of such physician or with his or her authorization, the certificate may be completed and signed by his or her associate physician, the chief medical officer of the institution in which death occurred, or the physician who performed an autopsy upon the decedent, if that individual has access to the medical history of the case, views the deceased at or after death, and death is due to natural causes.

(f) When an inquiry is conducted by the Office of the Chief Medical Examiner, the Medical Examiner shall determine the cause of death, and complete, sign, and return the medical certification portion of the death certificate to the funeral director within 48 hours after taking charge of the case.

(g) If the cause of death cannot be determined within 48 hours after death, the medical certification shall be completed as provided by regulation. The physician completing the medical certification or Medical Examiner shall give the funeral director or person acting as the funeral director, notice of the reason of the delay. Final disposition of the body shall not be made until authorized by the physician completing the medical certification or the Medical Examiner.

(h) When a death is presumed to have occurred within the District, but the body cannot be located, a death certificate shall be prepared by the Registrar upon receipt of an order of the Court pursuant to § 14-701. The Court order shall include a finding of facts necessary for completion of the death certificate. The death certificate shall be marked “presumptive”, show on its face the date of registration, identify the Court, and state the date of the decree.

(i) Each death certificate shall contain a pronouncement of death section, a medical certification of cause of death section, and the social security number of the deceased. For the purposes of this subsection, the pronouncement of death section shall include all facts required to be reported in this section, except for those facts relating to the medical cause or causes of death reported pursuant to subsections (e) and (f) of this section.

(j) In the case of an expected death at a decedent's place of residence at the time of death, attended by a treating physician or a registered nurse working in general collaboration with the treating physician, the attending registered nurse may sign the pronouncement of death section of the death certificate promptly following death.

(Oct. 8, 1981, D.C. Law 4-34, § 12, 28 DCR 3271; Mar. 13, 1992, D.C. Law 9-180, § 2(b), 39 DCR 8078; Apr. 3, 2001, D.C. Law 13-269, § 104(c), 48 DCR 1270.)

Section references. — This section is referred to in §§ 7-212, 7-214, and 7-220.

Prior Codifications. — 1981 Ed., § 6-211.

Effect of amendments. — D.C. Law 13-269 rewrote the first sentence of subsec. (i), which previously read “Each death certificate shall contain a pronouncement of death section and a medical certification of cause of death section.”

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3(c) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-103, May 8, 1998, law notification 45 DCR 3254).

For temporary (225 day) amendment of section, see § 3(c) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) amendment of section, see § 103(c) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) amendment of section, see § 103(c) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

Emergency legislation. — For temporary amendment of section, see § 3(c) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

For temporary amendment of section, see § 3(c) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 3(c) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 3(c) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 3(c) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary repeal of D.C. Law 12-103, see § 13 of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110).

For temporary (90-day) amendment of section, see § 103(c) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 103(c) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) amendment of section, see § 103(c) of the Child Support and Welfare Reform Compliance Congressional Re-

view Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) amendment of section, see § 103(c) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) amendment of section, see § 104(c) of Child Support and Welfare Reform Compliance Congressional Review

Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

Legislative history of Law 4-34. — For legislative history of D.C. Law 4-34, see Historical and Statutory Notes following § 7-201.

Legislative history of Law 9-180. — For legislative history of D.C. Law 9-180, see Historical and Statutory Notes following § 7-201.

Legislative history of Law 13-269. — For D.C. Law 13-269, see notes following § 7-201.

§ 7-212. Delayed filing and registration of death.

(a) A delayed certificate of death may be filed in accordance with regulations issued by the Registrar, when a death occurring in the District has not been registered within the time period specified in § 7-211. Any delayed certificate shall be registered subject to such evidentiary requirements as the Registrar shall prescribe by regulation in order to substantiate the alleged facts of death.

(b) A certificate of death registered 1 year or more after the date of death shall be marked “delayed” and shall show on its face the date of the delayed registration.

(Oct. 8, 1981, D.C. Law 4-34, § 13, 28 DCR 3271.)

Prior Codifications. — 1981 Ed., § 6-212.

Legislative history of Law 4-34. — For

legislative history of D.C. Law 4-34, see Historical and Statutory Notes following § 7-201.

§ 7-213. Reports of fetal deaths.

(a) Each fetal death of 20 completed weeks gestation or more, calculated from the date that the last normal menstrual period began to the date of delivery, or a weight of 500 grams or more, which occurs in the District shall be reported as directed by the Registrar within 5 days after occurrence. For purposes of preparing and filing a fetal death report the following rules apply:

(1) When such fetal death occurs in an institution, the person in charge of the institution or his or her designee shall prepare and file the report required by this section;

(2) When such fetal death occurs outside an institution, the physician in attendance at the delivery or immediately after delivery shall prepare and file the report required by this section;

(3) When a fetal death required to be reported under this section occurs without medical attendance at or immediately after the delivery, the Medical Examiner shall prepare and file the fetal death report;

(4) When such fetal death occurs on a moving conveyance and the fetus is first removed from the conveyance in the District, the fetal death shall be reported in the District. The place where the fetus was first removed from the conveyance shall be considered the place of fetal death;

(5) When a dead fetus is found in the District and the place of fetal death is unknown, the fetal death shall be reported in the District and the place where the dead fetus is found shall be considered the place of fetal death.

(b) The name of the mother and the father shall be entered on each fetal death report in accordance with the provisions of § 7-205.

(c) Each report required in this section is a statistical report to be used only for medical and health purposes and shall not be incorporated into the permanent official records of the system of vital records. A schedule for the disposition of these reports shall be provided for by regulation.

(Oct. 8, 1981, D.C. Law 4-34, § 14, 28 DCR 3271.)

Prior Codifications. — 1981 Ed., § 6-213. legislative history of D.C. Law 4-34, see Historical and Statutory Notes following § 7-201.
Legislative history of Law 4-34. — For

§ 7-214. Final disposition of dead body or fetus.

(a) The funeral director or person acting as such or person who first assumes custody of a dead body, before he or she may dispose of the body, must have: (1) Authorization for final disposition of the body from the next of kin; and (2) a death certificate. If the body is to be cremated, authorization for cremation must also be obtained from the Medical Examiner.

(b) Before final disposition of a dead fetus, regardless of the duration of pregnancy, the funeral director, the person in charge of the institution, or other person responsible for final disposition of the fetus, shall get authorization from the next of kin for final disposition.

(c) A dead body shall be removed from the place of death for the purpose of being prepared for final disposition only under the following conditions:

(1) Upon the consent of the medical examiner or the treating physician who certifies the cause of death; or

(2) In the case of an expected death at a decedent's place of residence, at the time of death upon the consent of a treating physician or a registered nurse working in general collaboration with the treating physician who signs the pronouncement of death section of the death certificate in accordance with § 7-211.

(d) Authorization for final disposition of a dead body or fetus brought into the District, issued by another state and accompanying the dead body or fetus, is sufficient authority for final disposition in the District.

(e) A sexton or person in charge of a place for interment or other disposition of dead bodies may not inter or allow interment or other disposition of a dead body or fetus unless it is accompanied by authorization for final disposition.

(f) Each person in charge of a place for final disposition shall include the date of disposition in the authorization and shall sign and return the authorization to the funeral director or person acting as the funeral director, within 10 days after the date of disposition. Where there is no person in charge of the place for final disposition, the funeral director or his or her designee shall endorse the authorization. At the close of each calendar month the funeral director or the person acting as the funeral director shall transmit to the Mayor all endorsed authorizations received during the month.

(g) Authorization for disinterment and reinterment is required before disinterment of a dead body or fetus. The authorization may be issued by the Registrar to a licensed funeral director or person acting as such, upon proper application.

(Oct. 8, 1981, D.C. Law 4-34, § 15, 28 DCR 3271; Mar. 13, 1992, D.C. Law 9-180, § 2(c), 39 DCR 8078.)

Prior Codifications. — 1981 Ed., § 6-214.

Legislative history of Law 4-34. — For legislative history of D.C. Law 4-34, see Historical and Statutory Notes following § 7-201.

Legislative history of Law 9-180. — For legislative history of D.C. Law 9-180, see Historical and Statutory Notes following § 7-201.

CASE NOTES

ANALYSIS

Liability.

Right to possession and disposal.

Liability.

District of Columbia law did not provide for presumption of damages for emotional distress from negligent mishandling of corpse; negligent failure to timely notify plaintiff of aunt's death or to preserve aunt's body for plaintiff to dispose of did not place anyone in zone of danger. *Mackey v. United States*, 8 F.3d 826, 1993 U.S. App. LEXIS 28739 (C.A.D.C. 1993).

Incident in which employee of undertaker left stillborn fetuses in van, from which they were dragged by dogs, did not constitute violation by undertaker of statute governing authorization for cremation or other disposal of dead bodies where, even assuming that conduct of employee brought about a disposal, bodies were

not cremated and all other necessary authorization documents were prepared. D.C. Code 1981, §§ 6-214, 6-214(f). *Vann v. District of Columbia Bd. of Funeral Directors & Embalmers*, 480 A.2d 688, 1984 D.C. App. LEXIS 439 (1984).

Right to possession and disposal.

Patient's niece who was legal next of kin had actionable right under District of Columbia law to possession of patient's body and, therefore, had claim against hospital for negligent interference with right to possession of body since hospital failed to timely notify niece of aunt's death. *Mackey v. United States*, 8 F.3d 826, 1993 U.S. App. LEXIS 28739 (C.A.D.C. 1993).

A violation of the legal right to possess, preserve, and bury or otherwise to dispose of a dead body is a tort. *Steagall v. Doctors Hospital*, 171 F.2d 352, 1948 U.S. App. LEXIS 2847 (C.A.D.C. 1948).

§ 7-215. Marriage registration.

(a) Each completed application and completed license for each marriage performed in the District on or after the effective date of this chapter shall be filed with the Registrar and shall be registered if it has been completed and filed in accordance with this chapter.

(b) The Court shall complete and forward to the Registrar on or before the 30th day of each calendar month the completed applications and completed licenses returned to the Court during the preceding calendar month.

(c) A marriage record not filed within the required time may be registered according to regulations issued by the Registrar.

(Oct. 8, 1981, D.C. Law 4-34, § 16, 28 DCR 3271.)

Prior Codifications. — 1981 Ed., § 6-215.

Legislative history of Law 4-34. — For

legislative history of D.C. Law 4-34, see Historical and Statutory Notes following § 7-201.

§ 7-216. Divorce and annulment registration.

(a) A record of each divorce and annulment granted by the Court shall be filed with the Registrar and shall be registered if it has been completed and filed in accordance with this section. The record shall be prepared by the plaintiff or his or her legal representative and shall be presented to the Clerk

of the Court with the complaint for divorce or annulment in accordance with the Rules of the Superior Court of the District of Columbia.

(b) The Court shall complete and forward to the Registrar on or before the 20th day of each calendar month the records of each divorce or annulment decree granted during the preceding calendar month.

(c) The social security number of each individual who is subject to the divorce or annulment decree shall be included in the records of the Superior Court and Registrar concerning the divorce or annulment.

(Oct. 8, 1981, D.C. Law 4-34, § 17, 28 DCR 3271; Apr. 3, 2001, D.C. Law 13-269, § 104(d), 48 DCR 1270.)

Prior Codifications. — 1981 Ed., § 6-216.

Effect of amendments. — D.C. Law 13-269 added subsec. (c).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3(d) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-103, May 8, 1998, law notification 45 DCR 3254).

For temporary (225 day) amendment of section, see § 3(d) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) amendment of section, see § 103(d) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) amendment of section, see § 103(d) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

Emergency legislation. — For temporary amendment of section, see § 3(d) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

For temporary amendment of section, see § 3(d) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 3(d) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 3(d) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503,

October 27, 1998, 45 DCR 8495), and § 3(d) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary repeal of D.C. Law 12-103, see § 13 of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110).

For temporary (90-day) amendment of section, see § 103(d) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 103(d) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) amendment of section, see § 103(d) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) amendment of section, see § 103(d) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) amendment of section, see § 104(d) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

Legislative history of Law 4-34. — For legislative history of D.C. Law 4-34, see Historical and Statutory Notes following § 7-201.

Legislative history of Law 13-269. — For D.C. Law 13-269, see notes following § 7-201.

§ 7-217. Amendment.

(a) The Registrar shall issue regulations governing amendment of vital records, which shall protect the integrity and accuracy of the vital records. A

certificate, or report registered under this chapter may be amended only in accordance with this chapter and regulations issued under this chapter.

(b) Except as otherwise provided in this section, a certificate or report that is amended under this section shall be marked "amended". The date of amendment and a summary description of the evidence submitted in support of the amendment shall be endorsed on or made a part of the records. The Registrar shall issue regulations which prescribe the conditions under which additions or minor corrections may be made to certificates, or reports, within 1 year after the date of the event without the certificate or record being marked "amended".

(c) Upon receipt of a certified copy of an order of a court of competent jurisdiction changing the name of a person born in the District and upon request of such person, his or her guardian or legal representative, or, in the case of a minor, his or her parents, the Registrar shall amend the certificate of birth to show the new name.

(d) Upon receipt of a certified copy of an order of the Court indicating that the sex of an individual born in the District has changed by surgical procedure and that such individual's name has been changed, the certificate of birth of such individual shall be amended as prescribed by regulation.

(e) The Registrar shall not amend the vital record if: (1) an applicant does not submit the minimum documentation required in the regulations for amending a vital record; or (2) when the Registrar has reasonable cause to question the validity or adequacy of the applicant's sworn statements or the documentary evidence, and the deficiencies are not corrected. The Registrar shall state in writing the reason for this action. Upon the Registrar's refusal to amend the vital record, the applicant shall have a cause of action in the Court to amend the vital record. The Registrar shall give the applicant written notice of this right.

(Oct. 8, 1981, D.C. Law 4-34, § 18, 28 DCR 3271; Mar. 14, 1985, D.C. Law 5-159, § 18, 32 DCR 30.)

Prior Codifications. — 1981 Ed., § 6-217.

Legislative history of Law 4-34. — For legislative history of D.C. Law 4-34, see Historical and Statutory Notes following § 7-201.

Legislative history of Law 5-159. — Law 5-159, the "End of Session Technical Amendments Act of 1984," was introduced in Council and assigned Bill No. 5-540, which was referred

to the Committee of the Whole. The Bill was adopted on first and second readings on November 20, 1984, and December 4, 1984, respectively. Signed by the Mayor on December 10, 1984, it was assigned Act No. 5-224 and transmitted to both Houses of Congress for its review.

CASE NOTES

Sex change by surgical procedure.

Statute governing amendment of birth certificate, upon receipt of certified copy of court order indicating that sex of individual born in District of Columbia changed by surgical procedure and that individual's name changed, does not give court authority to decide whether or not sex on individual's birth certificate should change; rather, duty of court is simply to

certify validity of documentation proving individual had sex change operation. In re Carolyn Ann Taylor, 131 WLR 2001 (Super. Ct. 2003).

Pursuant to statute governing amendment of birth certificate, upon receipt of certified copy of court order indicating that sex of individual born in District of Columbia changed by surgical procedure and that individual's name changed, original sex of individual would re-

main on birth certificate, along with changed sex; birth certificate is simply amended, rather than re-created. In re Carolyn Ann Taylor, 131 WLR 2001 (Super. Ct. 2003).

Superior court was statutorily compelled to grant request for change of sex on birth certificate of post-surgery transsexual. In re Carolyn Ann Taylor, 131 WLR 2001 (Super. Ct. 2003).

§ 7-218. Reproduction.

The Registrar may prepare typewritten, photographic, electronic, or other reproductions of certificates or reports in order to preserve the vital records. Such reproductions shall be accepted as the original records when certified by the Registrar. The documents from which permanent reproductions have been made and verified may be disposed of as provided by regulation.

(Oct. 8, 1981, D.C. Law 4-34, § 19, 28 DCR 3271.)

Prior Codifications. — 1981 Ed., § 6-218.

Legislative history of Law 4-34. — For

legislative history of D.C. Law 4-34, see Historical and Statutory Notes following § 7-201.

§ 7-219. Confidentiality.

(a) No person may permit inspection of, disclose information contained in, or copy or issue a copy of any part of a vital record except as authorized by this chapter, regulations issued under and consistent with this chapter, or by order of the Court. Regulations issued under this section shall provide for adequate standards of security and confidentiality of vital records.

(b) The Registrar may authorize the disclosure of information contained in vital records for research purposes, and shall issue regulations governing such use of the records.

(c) Except for certificates, reports, or other documents which are sealed or confidential by statute, 100 years after the date of birth, and 50 years after the date of death, marriage, divorce or annulment, records in the custody of the Registrar become public records. The Registrar shall issue regulations to provide for continued safekeeping of these records and to allow information in these records to be made available to the public.

(d) Notwithstanding the provisions of this section, the Registrar shall provide reports of deaths of children 18 years of age or younger who either received or were eligible to receive certificates of live birth, as defined by § 7-201(9), to the Child Fatality Review Committee pursuant to § 4-1317.12.

(Oct. 8, 1981, D.C. Law 4-34, § 20, 28 DCR 3271; Oct. 3, 2001, D.C. Law 14-28, § 4615, 48 DCR 6981.)

Section references. — This section is referred to in §§ 4-1376.06, 7-220, and 16-1054.

Prior Codifications. — 1981 Ed., § 6-219.

Effect of amendments. — D.C. Law 14-28 added subsec. (d).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 15 of Child Fatality Review Committee Establishment Temporary Act of 2001 (D.C. Law 14-20, September 6, 2001, law notification 48 DCR 9090).

Emergency legislation. — For temporary

(90 day) amendment of section, see § 15 of Child Fatality Review Committee Establishment Emergency Act of 2001 (D.C. Act 14-40, April 25, 2001, 48 DCR 5917).

For temporary (90 day) amendment of section, see § 15 of Child Fatality Review Committee Establishment Legislative Review Emergency Act of 2001 (D.C. Act 14-82, July 9, 2001, 48 DCR 6355).

Legislative history of Law 4-34. — For legislative history of D.C. Law 4-34, see Historical and Statutory Notes following § 7-201.

Legislative history of Law 14-28. — Law 14-28, the “Fiscal Year 2002 Budget Support Act of 2001”, was introduced in Council and assigned Bill No. 14-144, which was referred to the Committee Of the Whole. The Bill was adopted on first and second readings on May 1,

2001, and June 5, 2001, respectively. Signed by the Mayor on June 29, 2001, it was assigned Act No. 14-85 and transmitted to both Houses of Congress for its review. D.C. Law 14-28 became effective on October 3, 2001.

§ 7-220. Copies or data from records.

(a) Upon receipt of a written application the Registrar shall issue a certified copy of all or part of a vital record in his or her custody to any applicant having a direct and tangible interest in the vital record. Each copy issued shall show the date of registration. A copy issued from records marked “delayed” or “amended” shall show the date of registration and the effective date. The documentary evidence used to establish a delayed certificate shall be shown on each copy issued. For purposes of this subsection the following rules apply:

(1) The registrant, a member of his or her immediate family, his or her guardian, or their respective legal representatives shall be considered to have a direct and tangible interest. Others may demonstrate a direct and tangible interest when information is needed for determination or protection of a personal or property right;

(2) The term “legal representative” shall include an attorney, physician, funeral director, or other authorized agent acting in behalf of the registrant or his or her family;

(3) The natural parents of adopted children, when neither has custody, and commercial firms or agencies requesting listings of names and addresses shall not be considered to have a direct and tangible interest;

(4) A certified copy provided under this subsection shall be restricted to the information contained in the pronouncement of death section and shall not include the facts of the medical cause or causes of death reported under § 7-211(e) and (f) unless a qualified applicant having a direct and tangible interest in the death certificate makes a specific request for a certified copy of the medical certification of cause of death section, in which case the Registrar shall provide a separate certified copy of the medical certification of the cause of death section.

(b) A certified copy of all or part of a vital record, issued in accordance with subsection (a) of this section, shall be considered for all purposes the same as the original and shall be prima facie evidence of the facts stated in the record. The evidentiary value of a certificate or record filed more than 1 year after the event or a record which has been amended shall be determined by the judicial or administrative body or official before whom the certificate is offered as evidence.

(c) The Registrar may supply copies or data from the system of vital records to the federal agency responsible for national vital statistics, as that agency may require for national statistics purposes, if the federal agency shares in the cost of collecting, processing, and transmitting such data. The data shall not be used for other than statistical purposes by the federal agency without authorization from the Registrar.

(d) Federal, state, District, and other public or private agencies may upon request be furnished copies or data from the system of vital records for

statistical or administrative purposes upon such terms or conditions as may be prescribed by regulation. The copies or data shall not be used for purposes other than those for which they were requested.

(e) The Registrar may, by agreement, transmit copies of records and other reports required by this chapter to offices of vital records outside the District, when such records or other reports relate to residents of those jurisdictions or persons born in those jurisdictions. The agreement shall require that the copies be used for statistical and administrative purposes only and provide for the retention and disposition of such copies. Copies received by the Registrar from offices of vital records in the states shall be handled in the same manner as prescribed in this section.

(f) No person shall prepare or issue any certificate which purports to be an original, certified copy, or copy of a vital record except as authorized in this chapter or regulations issued under this chapter.

(g) Nothing in this chapter shall be construed to prevent the Registrar from providing:

(1) Information or data from the pronouncement of death and the medical certification of cause of death sections of the death certificate in accordance with §§ 7-219(b) and 7-220(c), (d), and (e); or

(2) A certified copy of the complete death certificate, including the pronouncement of death and the medical certification of cause of death sections, to an insurer, who has a direct and tangible interest in the death certificate, and who has issued a policy to or on behalf of the deceased which provides financial or monetary benefits payable upon the death of the deceased.

(h) The Registrar shall disclose information contained in vital records, or copies of vital records, to the IV-D agency upon request, for purposes directly related to paternity establishment or the establishment, modification, or enforcement of a support order.

(Oct. 8, 1981, D.C. Law 4-34, § 21, 28 DCR 3271; Mar. 13, 1992, D.C. Law 9-180, § 2(d), (e), 39 DCR 8078; Apr. 3, 2001, D.C. Law 13-269, § 104(e), 48 DCR 1270.)

Prior Codifications. — 1981 Ed., § 6-220.

Effect of amendments. — D.C. Law 13-269 added subsec. (h).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3(e) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-103, May 8, 1998, law notification 45 DCR 3254).

For temporary (225 day) amendment of section, see § 3(e) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1998 (D.C. Law 12-210, April 13, 1999, law notification 46 DCR 3832).

For temporary (225 day) amendment of section, see § 103(e) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 1999 (D.C. Law 13-57, March 7, 2000, law notification 47 DCR 1979).

For temporary (225 day) amendment of section, see § 103(e) of Child Support and Welfare Reform Compliance Temporary Amendment Act of 2000 (D.C. Law 13-207, March 31, 2001, law notification 48 DCR 3238).

Emergency legislation. — For temporary amendment of section, see § 3(e) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1997 (D.C. Act 12-222, December 23, 1997, 44 DCR 114).

For temporary amendment of section, see § 3(e) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-309, March 20, 1998, 45 DCR 1923), § 3(e) of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110), § 3(e) of the Child Support and Welfare

Reform Compliance Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-503, October 27, 1998, 45 DCR 8495), and § 3(e) of the Child Support and Welfare Reform Compliance Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-600, January 20, 1999, 46 DCR 1239).

For temporary repeal of D.C. Law 12-103, see § 13 of the Child Support and Welfare Reform Compliance Second Emergency Amendment Act of 1998 (D.C. Act 12-439, August 12, 1998, 45 DCR 6110).

For temporary (90-day) amendment of section, see § 103(e) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 1999 (D.C. Act 13-126, August 4, 1999, 46 DCR 6606).

For temporary (90-day) amendment of section, see § 103(e) of the Child Support and Welfare Reform Compliance Legislative Review Emergency Amendment Act of 1999 (D.C. Act 13-177, November 2, 1999, 46 DCR 9678).

For temporary (90-day) amendment of sec-

tion, see § 103(e) of the Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-241, January 11, 2000, 47 DCR 581).

For temporary (90 day) amendment of section, see § 103(e) of the Child Support and Welfare Reform Compliance Emergency Amendment Act of 2000 (D.C. Act 13-446, November 7, 2000, 47 DCR 9213).

For temporary (90 day) amendment of section, see § 104(e) of Child Support and Welfare Reform Compliance Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-5, February 13, 2001, 48 DCR 2440).

Legislative history of Law 4-34. — For legislative history of D.C. Law 4-34, see Historical and Statutory Notes following § 7-201.

Legislative history of Law 9-180. — For legislative history of D.C. Law 9-180, see Historical and Statutory Notes following § 7-201.

Legislative history of Law 13-269. — For D.C. Law 13-269, see notes following § 7-201.

§ 7-221. Fees for vital records and searches.

(a) The Mayor shall issue regulations that prescribe the fee to be paid for:

- (1) An amendment or correction to a vital record that is not the fault of the Mayor or a District government agency;
- (2) A certified copy of a certificate or record;
- (3) A search of a file or record if no copy is made;
- (4) A copy or information provided for research, statistical, or administrative purposes;
- (5) The processing of adoptions; or
- (6) Issuance of a new certificate of birth.

(b) The fee collected shall be deposited into the General Fund of the District government.

(Oct. 8, 1981, D.C. Law 4-34, § 22, 28 DCR 3271; Sept. 26, 1990, D.C. Law 8-168, § 2, 37 DCR 4833.)

Prior Codifications. — 1981 Ed., § 6-221.

Legislative history of Law 4-34. — For legislative history of D.C. Law 4-34, see Historical and Statutory Notes following § 7-201.

Legislative history of Law 8-168. — Law 8-168, the "Vital Records Act of 1981 Amendment Act of 1990," was introduced in Council and assigned Bill No. 8-450, which was referred to the Committee on Human Services. The Bill

was adopted on first and second readings on June 12, 1990, and June 26, 1990, respectively. Signed by the Mayor on July 12, 1990, it was assigned Act No. 8-233 and transmitted to both Houses of Congress for its review.

Delegation of Authority. — Delegation of Authority Pursuant to the Vital Records Act of 1981, see Mayor's Order 2002-13, February 1, 2002 (49 DCR 930).

§ 7-222. Persons required to keep records.

(a) A person in charge of an institution shall keep a record of personal data concerning each person admitted or confined to their institution. This record shall only include such information as required under this chapter for completion of certificates of birth and death and the reports of fetal death. The

person being admitted or confined shall provide the information at the time of admission. If that person is unable to provide the necessary information, a relative or other person familiar with the pertinent facts shall supply the information. The record shall include the name and address of the person providing the information.

(b) When a dead body or dead fetus is released or disposed of by an institution, the person in charge of the institution shall keep a record showing the name of the decedent, date of death, name and address of the person to whom the body or fetus is released, and the date of removal from the institution. If final disposition is made by the institution, the date, place, and manner of disposition shall also be recorded.

(c) A funeral director, embalmer, sexton, or other person who removes from the place of death, transports, or makes final disposition of a dead body or fetus, shall keep a record that identifies the body, and includes information pertaining to his or her receipt, removal, delivery, burial, or cremation of such body as may be required by regulations. This requirement supplements any other filing or reporting requirement imposed by this chapter or regulations.

(d) Records maintained under this section shall be retained for not less than 5 years and shall be made available for inspection by the Registrar according to regulation.

(Oct. 8, 1981, D.C. Law 4-34, § 23, 28 DCR 3271.)

Prior Codifications. — 1981 Ed., § 6-222. legislative history of D.C. Law 4-34, see Historical and Statutory Notes following § 7-201.
Legislative history of Law 4-34. — For

§ 7-223. Persons required to furnish information.

(a) A person with information needed to complete a certificate or report required under this chapter regarding any birth, death, fetal death, marriage, divorce, or annulment shall give such information to the Registrar upon request.

(b) Not later than the 10th day of the month following the month of occurrence, the administrator of each institution shall send to the vital records section a list showing each birth and death occurring in that institution during the preceding month.

(c) Not later than the 10th day of the month following the month of occurrence, each funeral director shall send to the Registrar a list showing each dead body embalmed or otherwise prepared for final disposition or finally disposed of by the funeral director during the preceding month.

(Oct. 8, 1981, D.C. Law 4-34, § 24, 28 DCR 3271.)

Prior Codifications. — 1981 Ed., § 6-223. legislative history of D.C. Law 4-34, see Historical and Statutory Notes following § 7-201.
Legislative history of Law 4-34. — For

§ 7-224. Matching birth and death certificates.

The Registrar is authorized to match birth and death certificates in accordance with written regulations issued by the Mayor to prove beyond a

reasonable doubt the fact of death, and to post the facts of death to the appropriate birth certificate. Copies issued from birth certificates marked deceased shall be similarly marked.

(Oct. 8, 1981, D.C. Law 4-34, § 25, 28 DCR 3271.)

Prior Codifications. — 1981 Ed., § 6-224. legislative history of D.C. Law 4-34, see Historical and Statutory Notes following § 7-201.
Legislative history of Law 4-34. — For

§ 7-225. Penalties.

(a) A fine of not more than \$200 or imprisonment of not more than 90 days, or both, shall be imposed on:

(1) Any person who willfully and knowingly violates any of the provisions of this chapter or refuses to perform any of the duties imposed upon him or her by this chapter or regulations issued under this chapter; or

(2) Any person who willfully or negligently makes a false certification in any document required by this chapter.

(b) Civil fines, penalties, and fees may be imposed as sanctions for any infraction of the provisions of this chapter, or the rules issued under authority of this chapter, pursuant to Chapter 18 of Title 2. Adjudication of any infractions shall be pursuant to Chapter 18 of Title 2.

(Oct. 8, 1981, D.C. Law 4-34, § 26, 28 DCR 3271; June 5, 2003, D.C. Law 14-307, § 502, 49 DCR 11664.)

Prior Codifications. — 1981 Ed., § 6-225.

Effect of amendments. — D.C. Law 14-307 designated the existing text as subsection (a); and added subsec. (b).

Emergency legislation. — For temporary (90 day) amendment of section, see § 502 of Fiscal Year 2003 Budget Support Amendment Emergency Act of 2002 (D.C. Act 14-544, December 4, 2002, 49 DCR 11700).

For temporary (90 day) amendment of section, see § 502 of the Fiscal Year 2003 Budget Support Amendment Congressional Review Emergency Act of 2003 (D.C. Act 15-27, February 24, 2003, 50 DCR 2151).

For temporary (90 day) amendment of section, see § 502 of Fiscal Year 2003 Budget Support Amendment Second Congressional Re-

view Emergency Act of 2003 (D.C. Act 15-103, June 20, 2003, 50 DCR 5499).

Legislative history of Law 4-34. — For legislative history of D.C. Law 4-34, see Historical and Statutory Notes following § 7-201.

Legislative history of Law 14-307. — Law 14-307, the "Fiscal Year 2003 Budget Support Amendment Act of 2002", was introduced in Council and assigned Bill No. 14-892, which was referred to the Committee on the Whole. The Bill was adopted on first and second readings on October 1, 2002, and November 7, 2002, respectively. Signed by the Mayor on December 4, 2002, it was assigned Act No. 14-543 and transmitted to both Houses of Congress for its review. D.C. Law 14-307 became effective on June 5, 2003.

§ 7-226. Regulations.

The Registrar may issue regulations as necessary to carry out the purposes of this chapter. The regulations shall be issued according to subchapter I of Chapter 5 of Title 2.

(Oct. 8, 1981, D.C. Law 4-34, § 27, 28 DCR 3271.)

Section references. — This section is referred to in § 7-228.

Prior Codifications. — 1981 Ed., § 6-226.

Legislative history of Law 4-34. — For legislative history of D.C. Law 4-34, see Historical and Statutory Notes following § 7-201.

§ 7-227. Severability.

If any provision of this chapter or its application to a particular person or circumstance is held invalid, such invalidity does not affect other provisions or applications.

(Oct. 8, 1981, D.C. Law 4-34, § 28, 28 DCR 3271.)

Prior Codifications. — 1981 Ed., § 6-227. legislative history of D.C. Law 4-34, see Historical and Statutory Notes following § 7-201.
Legislative history of Law 4-34. — For

§ 7-228. Effective date.

(a) Sections 7-202, 7-203, and 7-226 (including the authority to issue regulations to implement the entire chapter) shall take effect after a 30-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in § 1-206.02(c)(1).

(b) All other sections of this chapter shall take effect 60 days after the date provided in subsection (a) of this section.

(Oct. 8, 1981, D.C. Law 4-34, § 31, 28 DCR 3271.)

Prior Codifications. — 1981 Ed., § 6-228. legislative history of D.C. Law 4-34, see Historical and Statutory Notes following § 7-201.
Legislative history of Law 4-34. — For

CHAPTER 2A. DATA SHARING.

| | |
|---|---|
| Sec. | Sec. |
| 7-241. Definitions. | 7-246. Criminal penalties for unlawful use or disclosure. |
| 7-242. Use and disclosure of health and human services information. | 7-247. Relation to other laws. |
| 7-243. Data system. | 7-248. Rules. |
| 7-244. Disclosures to a service provider. | |
| 7-245. Civil penalties for unlawful use or disclosure. | |

§ 7-241. Definitions.

For the purposes of this chapter, the term:

(1) “Agency” means an agency, department, unit, or instrumentality of the District of Columbia government.

(2) “Disclosure” means the release, transfer, provision of access to, or distribution of information in any manner by an entity holding the information to a person outside of the entity.

(3) “Health and human services information” means any information that relates to:

(A) The past, present, or future physical or mental health of an individual or family;

(B) The provision of health care or human services, including benefits or supports, to an individual or family; or

(C) The past, present, or future payment for the provision of health care or human services to an individual or family.

(4) “HIPAA” means the Health Insurance Portability and Accountability Act of 1996, approved August 21, 1996 (110 Stat. 1936; 42 U.S.C. § 1320d et seq.), and the regulations issued pursuant to it.

(5) “Human services” means programs, assistance, supports, or benefits of any kind to improve quality of life or to meet the social, physical health, housing, and mental health needs of an individual.

(6) “Identified individual” means a natural person to whom health and human services information pertains.

(7) “Individually identifiable health information” shall have the same meaning as it does in HIPAA.

(8) “Person” means a natural person, firm, company, association, corporation, service provider, or government instrumentality or agency.

(9) “Service provider” means an entity that provides health or human services to District residents pursuant to a contract, grant, or other similar agreement with an agency.

(10) “Use” means the sharing, employment, application, utilization, examination, or analysis of health and human services information.

(Dec. 4, 2010, D.C. Law 18-273, § 101, 57 DCR 7171.)

Emergency legislation. — For temporary (90 day) addition, see § 101 of Data-Sharing and Information Coordination Emergency Amendment Act of 2010 (D.C. Act 18-530, August 6, 2010, 57 DCR 8099). For temporary (90 day) addition, see § 101 of

Data-Sharing and Information Coordination Congressional Review Emergency Amendment Act of 2010 (D.C. Act 18-582, October 20, 2010, 57 DCR 10118).

Legislative history of Law 18-273. —⁴Law 18-273, the “Data-Sharing and Information Coordination Amendment Act of 2010”, was introduced in Council and assigned Bill No. 18-356 which was referred to the Committee on Health and Human Services. The Bill was adopted on first and second readings on June 1, 2010, and June 29, 2010, respectively. Signed by the

Mayor on July 20, 2010, it was assigned Act No. 18-489 and transmitted to both Houses of Congress for its review. D.C. Law 18-273 became effective on December 4, 2010.

Mayor’s Orders. — Establishment of a Health and Human Services Integrated Case Management Initiative; Establishment of a Health and Human Services Integrated Case Management Executive Committee; and Delegation of Rulemaking Authority to the Department of Human Services, see Mayor’s Order 2011-169, October 5, 2011 (58 DCR 8843).

§ 7-242. Use and disclosure of health and human services information.

(a) In accordance with § 7-243 and without prior consent from the identified individual, an agency or service provider may use and shall disclose to another agency or service provider health and human services information referencing or relating to the identified individual for the following purposes; provided, that the use or disclosure is not specifically prohibited under District or federal law:

(1) To establish the identified individual’s eligibility for, or determine his or her amount and type of:

- (A) Treatment;
- (B) Services;
- (C) Benefits;
- (D) Support; or
- (E) Assistance;

(2) To coordinate for the identified individual, his or her:

- (A) Treatment;
- (B) Benefits;
- (C) Services;
- (D) Support; or
- (E) Assistance;

(3) To conduct oversight activities, including:

- (A) Management;
- (B) Financial and other audits;
- (C) Program evaluations;
- (D) Planning;
- (E) Investigations;
- (F) Examinations;
- (G) Inspections;
- (H) Quality reviews;
- (I) Licensure;
- (J) Disciplinary actions; or
- (K) Civil, administrative, or criminal proceedings or actions; and

(4) To conduct research related to treatment, benefits, services, supports, and assistance; provided, that:

(A) Health and human services information referencing or relating to an identified individual shall not be disclosed in a manner that would permit

the identity of the individual to be reasonably inferred by either direct or indirect means; and

(B) The agency or service provider receiving the health and human services information shall affirm in writing that any individually identifiable health information shall be treated in accordance with HIPAA.

(b) A service provider shall disclose health and human services information to an agency upon request by the agency; provided, that the disclosure and use of such information is in accordance with this chapter.

(c) An agency or service provider shall use or disclose individually identifiable health information in accordance with HIPAA.

(d) When using or disclosing health and human services information, an agency or service provider shall make reasonable efforts to limit such information to the minimum amount necessary to accomplish the purpose of the use or disclosure.

(e) An agency or service provider that discloses health and human services information shall designate an individual responsible for:

(1) Responding to requests for health and human services information from another agency or service provider, who shall:

(A) Respond to a request within 48 hours;

(B) Not unreasonably deny a request; and

(C) Within 5 business days of the date of the request, supply the requested information to the extent such request was approved; and

(2) Ensuring that any health and human services information disclosed pursuant to § 7-243 is limited to the minimum amount of information necessary to accomplish the purpose of the disclosure.

(Dec. 4, 2010, D.C. Law 18-273, § 102, 57 DCR 7171.)

Emergency legislation. — For temporary (90 day) addition, see § 102 of Data-Sharing and Information Coordination Emergency Amendment Act of 2010 (D.C. Act 18-530, August 6, 2010, 57 DCR 8099).

For temporary (90 day) addition, see § 102 of

Data-Sharing and Information Coordination Congressional Review Emergency Amendment Act of 2010 (D.C. Act 18-582, October 20, 2010, 57 DCR 10118).

Legislative history of Law 18-273. — For Law 18-273, see notes following § 7-241.

§ 7-243. Data system.

The Mayor may establish a single or combined data system to store and share health and human services information; provided, that the system meets the security requirements of HIPAA and that individuals with authority to access the system receive training in accordance with HIPAA prior to any use of the system.

(Dec. 4, 2010, D.C. Law 18-273, § 103, 57 DCR 7171.)

Emergency legislation. — For temporary (90 day) addition, see § 103 of Data-Sharing and Information Coordination Emergency Amendment Act of 2010 (D.C. Act 18-530, August 6, 2010, 57 DCR 8099).

For temporary (90 day) addition, see § 103 of

Data-Sharing and Information Coordination Congressional Review Emergency Amendment Act of 2010 (D.C. Act 18-582, October 20, 2010, 57 DCR 10118).

Legislative history of Law 18-273. — For Law 18-273, see notes following § 7-241.

§ 7-244. Disclosures to a service provider.

(a) Before an agency or service provider discloses health and human services information to a service provider pursuant to this chapter, the receiving service provider shall make a written request for the information, describing the health and human services information sought and the purpose for the information.

(b) Regarding requests for health and human services information from a service provider, an agency or service provider must maintain an accurate record, for a reasonable period of time:

- (1) Of the date and purpose for any request for the information;
- (2) The date on which the information was disclosed; and
- (3) A record of to whom the information was disclosed.

(Dec. 4, 2010, D.C. Law 18-273, § 104, 57 DCR 7171.)

Emergency legislation. — For temporary (90 day) addition, see § 104 of Data-Sharing and Information Coordination Emergency Amendment Act of 2010 (D.C. Act 18-530, August 6, 2010, 57 DCR 8099).

For temporary (90 day) addition, see § 104 of Data-Sharing and Information Coordination Congressional Review Emergency Amendment Act of 2010 (D.C. Act 18-582, October 20, 2010, 57 DCR 10118).

For temporary (90 day) amendment of section, see § 211(a) of Data-Sharing and Information Coordination Congressional Review Emergency Amendment Act of 2010 (D.C. Act 18-582, October 20, 2010, 57 DCR 10118).

Legislative history of Law 18-273. — For Law 18-273, see notes following § 7-241.

§ 7-245. Civil penalties for unlawful use or disclosure.

(a)(1) A person who negligently uses or discloses health and human services information in a manner not authorized by this chapter or other District law shall be liable in an amount of \$500 for each violation.

(2) For the purposes of this subsection, the term “negligently” means that a person guided by ordinary considerations should have known, and by exercising reasonable diligence would have known, that the use or disclosure was not authorized.

(b) A person who willfully uses or discloses health and human services information in a manner not authorized by this chapter or other District law shall be liable in an amount of \$1,000 for each violation.

(c) This section shall not apply to disclosures of information authorized pursuant to other District law or to federal law.

(Dec. 4, 2010, D.C. Law 18-273, § 105, 57 DCR 7171.)

Emergency legislation. — For temporary (90 day) addition, see § 105 of Data-Sharing and Information Coordination Emergency Amendment Act of 2010 (D.C. Act 18-530, August 6, 2010, 57 DCR 8099).

For temporary (90 day) addition, see § 105 of Data-Sharing and Information Coordination Congressional Review Emergency Amendment Act of 2010 (D.C. Act 18-582, October 20, 2010, 57 DCR 10118).

For temporary (90 day) amendment of section, see § 211(b) of Data-Sharing and Information Coordination Congressional Review Emergency Amendment Act of 2010 (D.C. Act 18-582, October 20, 2010, 57 DCR 10118).

Legislative history of Law 18-273. — For Law 18-273, see notes following § 7-241.

§ 7-246. Criminal penalties for unlawful use or disclosure.

A person who knowingly obtains, uses, or discloses health and human services information in a manner not authorized by this chapter or other District law shall be guilty of a misdemeanor, and upon conviction, shall be fined not more than \$2,500, imprisoned not more than 60 days, or both; except, that if the offense is committed through deception or theft the person shall be guilty of a misdemeanor and shall be fined not more than \$5,000, imprisoned for not more than 180 days, or both.

(Dec. 4, 2010, D.C. Law 18-273, § 106, 57 DCR 7171.)

Emergency legislation. — For temporary (90 day) addition, see § 106 of Data-Sharing and Information Coordination Emergency Amendment Act of 2010 (D.C. Act 18-530, August 6, 2010, 57 DCR 8099).

For temporary (90 day) addition, see § 106 of

Data-Sharing and Information Coordination Congressional Review Emergency Amendment Act of 2010 (D.C. Act 18-582, October 20, 2010, 57 DCR 10118).

Legislative history of Law 18-273. — For Law 18-273, see notes following § 7-241.

§ 7-247. Relation to other laws.

If a civil or criminal penalty imposed by another law applies to an action that is also subject to a civil or criminal penalty under this chapter, the greater penalty shall apply.

(Dec. 4, 2010, D.C. Law 18-273, § 107, 57 DCR 7171.)

Emergency legislation. — For temporary (90 day) addition, see § 107 of Data-Sharing and Information Coordination Emergency Amendment Act of 2010 (D.C. Act 18-530, August 6, 2010, 57 DCR 8099).

For temporary (90 day) addition, see § 107 of

Data-Sharing and Information Coordination Congressional Review Emergency Amendment Act of 2010 (D.C. Act 18-582, October 20, 2010, 57 DCR 10118).

Legislative history of Law 18-273. — For Law 18-273, see notes following § 7-241.

§ 7-248. Rules.

(a) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], shall issue rules to implement the provisions of this chapter.

(b) The Mayor shall submit the proposed rules to the Council for a 30-day period of review, excluding Saturdays, Sundays, holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 30-day review period, the proposed rules shall be deemed approved.

(Dec. 4, 2010, D.C. Law 18-273, § 108, 57 DCR 7171.)

Emergency legislation. — For temporary (90 day) addition, see § 108 of Data-Sharing and Information Coordination Emergency Amendment Act of 2010 (D.C. Act 18-530, August 6, 2010, 57 DCR 8099).

For temporary (90 day) addition, see § 108 of

Data-Sharing and Information Coordination Congressional Review Emergency Amendment Act of 2010 (D.C. Act 18-582, October 20, 2010, 57 DCR 10118).

Legislative history of Law 18-273. — For Law 18-273, see notes following § 7-241.

CHAPTER 3. REPORTS OF CANCER AND MALIGNANT NEOPLASTIC DISEASES.

Sec.

7-301. Mayor to issue rules.

7-302. Confidentiality.

7-303. Medical examination or treatment not required.

Sec.

7-304. Penalties; prosecutions.

§ 7-301. Mayor to issue rules.

The Mayor may, upon the advice of the Commissioner of Public Health and pursuant to subchapter I of Chapter 5 of Title 2, issue rules to prevent and monitor the occurrence of cancer in the District of Columbia.

(July 27, 1951, 65 Stat. 124, ch. 241, § 1; Feb. 21, 1986, D.C. Law 6-83, § 2(a), 32 DCR 7276.)

Prior Codifications. — 1981 Ed., § 6-1201. 1973 Ed., § 6-1301.

Emergency legislation. — For temporary amendment of section, see § 506(a) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

For temporary amendment of section, see § 506(b) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

For temporary amendment of section, see § 506(d) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

For temporary amendment of section, see § 506(e) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

For temporary amendment of section, see § 506(f) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

For temporary amendment of section, see § 402(a) of the Omnibus Budget Support Emer-

gency Act of 1995 (D.C. Act 11-44, April 28, 1995, 42 DCR 2217) and § 506(g) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

For temporary amendment of section, see § 506(h) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative history of Law 6-83. — Law 6-83, the "Preventive Health Services Amendments Act of 1985," was introduced in Council and assigned Bill No. 6-99, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 5, 1985, and November 19, 1985, respectively. Signed by the Mayor on November 27, 1985, it was assigned Act No. 6-108 and transmitted to both Houses of Congress for its review.

Delegation of Authority. — Delegation of authority pursuant to Law 6-83, see Mayor's Order 86-165, September 19, 1986.

Delegation of authority pursuant to the "Preventive Health Services Amendment Act of 1985", see Mayor's Order 98-141, August 20,

§ 7-302. Confidentiality.

The Commissioner of Public Health shall use the records incident to a reported case of cancer for statistical and public health purposes only, and identifying information contained in these records shall be disclosed only when essential to safeguard the physical health of others. No person shall otherwise disclose or redisclose identifying information derived from these records unless:

- (1) The person reported gives his or her prior written permission;
- (2) A court finds, upon clear and convincing evidence and after granting the person reported an opportunity to contest the disclosure, that disclosure is essential to safeguard the physical health of others; or
- (3) The identifying information is exchanged with a cancer registry that is

maintained by a state and the Commissioner of Public Health receives a satisfactory assurance from the cancer registry that the confidentiality of the identifying information shall be preserved.

(July 27, 1951, 65 Stat. 124, ch. 241, § 2; Feb. 21, 1986, D.C. Law 6-83, § 2(b), 32 DCR 7276; Sept. 11, 1990, D.C. Law 8-157, § 2, 37 DCR 4165.)

Section references. — This section is referred to in § 7-304.

Prior Codifications. — 1981 Ed., § 6-1202. 1973 Ed., § 6-1302.

Legislative history of Law 6-83. — For legislative history of D.C. Law 6-83, see Historical and Statutory Notes following § 7-301.

Legislative history of Law 8-157. — Law 8-157, the “Preventive Health Services Amend-

ment Act of 1990,” was introduced in Council and assigned Bill No. 8-385, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on May 29, 1990, and June 12, 1990, respectively. Signed by the Mayor on June 18, 1990, it was assigned Act No. 8-219 and transmitted to both Houses of Congress for its review.

§ 7-303. Medical examination or treatment not required.

Nothing in this chapter or any rules or regulations issued pursuant to this chapter shall be construed to compel a person with cancer to submit to medical examination or treatment.

(July 27, 1951, 65 Stat. 124, ch. 241, § 3; Feb. 21, 1986, D.C. Law 6-83, § 2(c), 32 DCR 7276.)

Prior Codifications. — 1981 Ed., § 6-1203. 1973 Ed., § 6-1303.

Legislative history of Law 6-83. — For

legislative history of D.C. Law 6-83, see Historical and Statutory Notes following § 7-301.

§ 7-304. Penalties; prosecutions.

(a) Except as provided in subsection (b) of this section, any person who willfully violates this chapter or any rule or regulation issued pursuant to this chapter shall be guilty of a misdemeanor and, upon conviction, subject to a fine not exceeding \$1,000.

(b) Any person who willfully discloses, receives, uses, or permits the use of information in violation of § 7-302 shall be guilty of a misdemeanor and, upon conviction, subject to a fine not exceeding \$5,000, imprisonment for not more than 90 days, or both.

(c) Prosecution shall be in the Superior Court of the District of Columbia by information signed by the Corporation Counsel.

(July 27, 1951, 65 Stat. 124, ch. 241, § 4; July 8, 1963, 77 Stat. 77, Pub. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); Feb. 21, 1986, D.C. Law 6-83, § 2(d), 32 DCR 7276.)

Prior Codifications. — 1981 Ed., § 6-1204. 1973 Ed., § 6-1304.

Legislative history of Law 6-83. — For

legislative history of D.C. Law 6-83, see Historical and Statutory Notes following § 7-301.

CHAPTER 4. LIMITATION ON LIABILITY FOR MEDICAL CARE OR ASSISTANCE
IN EMERGENCY SITUATIONS.

Sec.

7-401. Limitation on liability for medical care or assistance in emergency situations.

Sec.

7-402. Health care professional volunteer assistance protection.

§ 7-401. Limitation on liability for medical care or assistance in emergency situations.

(a) Any person who in good faith renders emergency medical care or assistance to an injured person at the scene of an accident or other emergency in the District of Columbia outside of a hospital, without the expectation of receiving or intending to seek compensation from such injured person for such service, shall not be liable in civil damages for any act or omission, not constituting gross negligence, in the course of rendering such care or assistance.

(b) In the case of a person who renders emergency medical care or assistance in circumstances described in subsection (a) of this section and who is not licensed or certified by the District of Columbia or by any state to provide medical care or assistance, the limited immunity provided in subsection (a) of this section shall apply to such persons; provided, that the person shall relinquish the direction of the care of the injured person when an appropriate person licensed or certified by the District of Columbia or by any state to provide medical care or assistance assumes responsibility for the care of the injured person.

(c) A certified emergency medical technician/paramedic or emergency medical technician/intermediate paramedic who, in good faith and pursuant to instructions either directly or via telecommunication from a licensed physician, renders advanced emergency medical care or assistance to an injured person at the scene of an accident or other emergency or in transit from the scene of an accident or emergency to a hospital shall not be liable in civil damages for any act or omission not constituting gross negligence in the course of rendering such advanced emergency medical care or assistance.

(d) A licensed physician who in good faith gives emergency medical instructions either directly or via telecommunication to a certified emergency medical technician/paramedic or emergency medical technician/intermediate paramedic for the purpose of providing advanced emergency medical care to an injured person at the scene of an accident or other emergency or in transit from the scene of an accident or emergency to a hospital shall not be liable in civil damages for any act or omission not constituting gross negligence in the course of giving such emergency medical instructions.

(d-1) If the Mayor of the District of Columbia declares a state of emergency pursuant to § 7-2304, any act or omission of an emergency medical technician/paramedic ("Paramedic"), an emergency medical technician/intermediate paramedic ("EMT/I"), or an emergency medical technician ("EMT"), performed while providing advanced or basic life support to a patient or trauma victim

shall not impose liability upon the Paramedic, EMT/I, or EMT, or any employer of the Paramedic, EMT/I, or EMT; provided, that the care is provided in good faith and does not constitute gross negligence.

(e) For the purposes of this section, the terms "emergency medical technician/paramedic," and "emergency medical technician/intermediate paramedic," and "emergency medical technician" mean a person who has been trained in advanced emergency medical care, employed in that capacity, and certified by the appropriate governmental certifying authority in the District of Columbia or in any state to:

- (1) Carry out all phases of basic life support;
- (2) Administer drugs under the written or oral authorization, including via telecommunication, of a licensed physician;
- (3) Administer intravenous solutions under the written or oral authorization, including via telecommunication, of a licensed physician; and
- (4) Carry out, either directly or via telecommunication instructions from a licensed physician, certain other phases of advanced life support as authorized by the appropriate governmental certifying authority.

(Nov. 8, 1965, 79 Stat. 1302, Pub. L. 89-341, § 1; Sept. 28, 1977, D.C. Law 2-25, § 2, 24 DCR 3718; Aug. 1, 1981, D.C. Law 4-25, § 3; 28 DCR 2622; Oct. 17, 2002, D.C. Law 14-194, § 402, 49 DCR 5306.)

Cross references. — Distribution of controlled substances, see § 48-903.01 et seq.

Prior Codifications. — 1981 Ed., § 2-1344. 1973 Ed., § 2-142.

Effect of amendments. — D.C. Law 14-194 added subsec. (d-1); and in subsec. (e), substituted 'emergency medical technician/paramedic,' 'emergency medical technician/intermediate paramedic,' and 'emergency medical technician' for 'emergency medical technician/paramedic' and 'emergency medical technician/intermediate paramedic'.

Legislative history of Law 2-25. — Law 2-25, the "Advanced Life Support Act of 1977," was introduced in Council and assigned Bill No. 2-136, which was referred to the Committee on the Judiciary. The Bill was adopted on first

and second readings on June 14, 1977 and June 28, 1977, respectively. Signed by the Mayor on July 8, 1977, it was assigned Act No. 2-56 and transmitted to both Houses of Congress for its review.

Legislative history of Law 4-25. — Law 4-25, the "Intermediate Paramedic Regulations Act of 1981," was introduced in Council and assigned Bill No. 4-198, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 5, 1981, and May 19, 1981, respectively. Signed by the Mayor on June 5, 1981, it was assigned Act No. 4-46 and transmitted to both Houses of Congress for its review.

Legislative history of Law 14-194. — For Law 14-194, see notes following § 7-132.

§ 7-402. Health care professional volunteer assistance protection.

(a) A licensed physician, registered nurse, or nurse-midwife certified or practicing in the specialty of obstetrics or gynecology who in good faith provides health care or treatment at or on behalf of a free health clinic operating lawfully in the District of Columbia without the expectation of receiving or intending to receive compensation shall not be liable in civil damages for any act or omission in the course of rendering the health care or treatment, unless the act or omission is an intentional wrong or manifests a willful or wanton disregard for the health or safety of others.

(b) A licensed physician, registered nurse, or nurse-midwife providing

medical care or assistance in obstetrics or gynecology in accordance with subsection (a) of this section shall provide and shall require his or her prospective client to sign a written statement witnessed by 2 persons in which the parties agree to the rendering of the health care or treatment.

(c) The immunity provided in subsection (a) of this section shall apply to any claim, arising out of health care or treatment given under subsection (a) of this section against:

(1) District of Columbia public health clinic; and

(2) a free clinic, and the District of Columbia as an indemnifier of such a free clinic, which meets the eligibility requirements of § 1-307.21(2).

(Nov. 8, 1965, Pub. L. 89-341, § 2, as added Aug. 17, 1991, D.C. Law 9-41, § 3, 38 DCR 4979; Feb. 5, 1994, D.C. Law 10-68, § 9, 40 DCR 6311; May 16, 1995, D.C. Law 10-255, § 6, 41 DCR 5193.)

Cross references. — Free clinic assistance program, see § 1-307.22.

Prior Codifications. — 1981 Ed., § 2-1345.

Legislative history of Law 9-41. — Law 9-41, the "Health Care Professional Volunteer Assistance Protection Amendment Act of 1991," was introduced in Council and assigned Bill No. 9-42, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 4, 1991, and July 2, 1991, respectively. Signed by the Mayor on July 24, 1991, it was assigned Act No. 9-78 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-68. — Law 10-68, the "Technical Amendments Act of 1993," was introduced in Council and assigned Bill No. 10-166, which was referred to the Commit-

tee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

Legislative history of Law 10-255. — Law 10-255, the "Technical Amendments Act of 1994," was introduced in Council and assigned Bill No. 10-673, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10-255 became effective on May 16, 1995.

CHAPTER 5. PROGRAMS FOR OLDER CITIZENS.

UNIT A. OFFICE ON AGING AND COMMISSION ON AGING

Subchapter I. Purpose

Sec.

7-501.01. Purpose.

Subchapter II. Definitions

7-502.01. Definitions.

Subchapter III. Office on Aging

7-503.01. Establishment.

7-503.02. Executive Director — Appointment; compensation; staff.

7-503.03. Executive Director — Duties.

7-503.04. Impact statements.

7-503.05. Standards for grant and contract awards.

7-503.06. Transfer of funds and positions from Division of Services to the Aging.

Subchapter IV. Commission on Aging

7-504.01. Establishment.

7-504.02. Composition; appointment.

Sec.

7-504.03. Qualifications.

7-504.04. Term of office.

7-504.05. Vacancies.

7-504.06. Rules of procedure.

7-504.07. Chairperson.

7-504.08. Compensation; expenses.

7-504.09. Staff; technical assistance.

7-504.10. Duties.

UNIT B. VOLUNTEER SERVICE CREDIT PROGRAM

7-531.01. Definitions.

7-531.02. Establishment of pilot volunteer service credit program.

7-531.03. Targeted services.

7-531.04. Service credits.

7-531.05. Service credit guarantee.

7-531.06. Advisory committees.

7-531.07. Demonstration projects.

7-531.08. Status of volunteers; reimbursement.

7-531.09. Qualified immunity.

7-531.10. Rules.

7-531.11. Reporting to Council.

Unit A. Office on Aging and Commission on Aging.

Subchapter I. Purpose.

§ 7-501.01. Purpose.

It is the intent of the Council of the District of Columbia that the District government shall insure a full range of health, education, employment, and social services shall be available to the aged in the District of Columbia, and the planning and operation of such programs will be undertaken as a partnership of older citizens, families, community leaders, private agencies, and the District of Columbia government.

(Oct. 29, 1975, D.C. Law 1-24, title I, § 101, 22 DCR 2456.)

Prior Codifications. — 1981 Ed., § 6-2201. 1973 Ed., § 6-1701.

Legislative history of Law 1-24. — Law 1-24, the "District of Columbia Act on the Aging," was introduced in Council and assigned Bill No. 1-106, which was referred to the Committee on Human Resources and Aging. The Bill was adopted on first and second readings

on June 17, 1975 and July 1, 1975, respectively. Signed by the Mayor on July 25, 1975, it was assigned Act No. 1-36 and transmitted to both Houses of Congress for its review.

Editor's notes. — Advisory Committee on Aging abolished: The District of Columbia Advisory Committee on Aging was abolished by § 411 of D.C. Law 1-24.

Subchapter II. Definitions.

§ 7-502.01. Definitions.

(1) "Office" means the Office on Aging created by § 7-503.01.

(2) "Director" means the Executive Director of the Office on Aging.

(3) "Commission" means the Commission on the Aging created by § 7-504.01.

(4) "Aged" means a person 60 years of age or older.

(5) "Services to the aged" means those services designed to provide assistance to the aged, including nutritional programs, transportation and legal services, health and financial assistance, employment and housing programs, recreational opportunities, and information, referral, and counseling services.

(Oct. 29, 1975, D.C. Law 1-24, title II, § 201, 22 DCR 2456.)

Prior Codifications. — 1981 Ed., § 6-2202.
1973 Ed., § 6-1702.

legislative history of D.C. Law 1-24, see Historical and Statutory Notes following § 7-501.01.

Legislative history of Law 1-24. — For

Subchapter III. Office on Aging.

§ 7-503.01. Establishment.

There is established an Office on Aging. The Office shall provide within the District government a single administrative unit, responsible to the Mayor, to administer the provisions of the Older Americans Act (P.L. 89-73, as amended), and such other programs as shall be delegated to it by the Mayor or the Council of the District of Columbia, and to promote the welfare of the aged.

(Oct. 29, 1975, D.C. Law 1-24, title III, § 301, 22 DCR 2457; Oct. 17, 1981, D.C. Law 4-42, § 9(b)(1), 28 DCR 3425.)

Section references. — This section is referred to in §§ 1-603.01, 7-502.01, 7-503.06 and 7-701.01.

Prior Codifications. — 1981 Ed., § 6-2211.
1973 Ed., § 6-1711.

Legislative history of Law 1-24. — For legislative history of D.C. Law 1-24, see Historical and Statutory Notes following § 7-501.01.

Legislative history of Law 4-42. — Law 4-42, the "Governmental Reorganization Procedures Act of 1981," was introduced in Council

and assigned Bill No. 4-197, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 16, 1981, and June 30, 1981, respectively. Signed by the Mayor on July 23, 1981, it was assigned Act No. 4-71 and transmitted to both Houses of Congress for its review.

References in text. — The "Older Americans Act" is codified at 42 U.S.C. § 3001 et seq.

§ 7-503.02. Executive Director — Appointment; compensation; staff.

The Office shall be headed by an Executive Director, who shall be appointed by the Mayor with the advice and consent of the Council of the District of Columbia, from a list of not more than 3 names submitted to him by the Commission. The Director shall devote his full time to the duties of his office. His annual compensation shall be fixed in accordance with Chapter 51 of Title 5, United States Code (relating to the classification of government employees and related matters), but shall be not less than a GS-15, Step 1 or the equivalent compensation pursuant to the provisions of subchapter XI of Chapter 6 of Title 1. He shall have such staff as is approved in the current

District government budget and federal grants, plus any temporary staff approved by the Office of Budget and Management Systems.

(Oct. 29, 1975, D.C. Law 1-24, title III, § 302, 22 DCR 2457; Mar. 3, 1979, D.C. Law 2-139, § 3205(t), 25 DCR 5740.)

Cross references. — Effective date provisions, see § 1-636.02.

Section references. — This section is referred to in § 7-701.01.

Prior Codifications. — 1981 Ed., § 6-2212. 1973 Ed., § 6-1712.

Legislative history of Law 1-24. — For legislative history of D.C. Law 1-24, see Historical and Statutory Notes following § 7-501.01.

Legislative history of Law 2-139. — Law 2-139, the “District of Columbia Government Comprehensive Merit Personnel Act of 1978,” was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was ad-

opted on first and second readings on October 17, 1978, and October 31, 1978, respectively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

References in text. — “GS-15, Step 1,” referred to in the second sentence, is contained in the General Schedule, which is set out following § 5332 of Title 5, United States Code.

Delegation of Authority. — Delegation of authority under D.C. Law 7-218, the “District of Columbia Long-Term Care Ombudsman Program Act of 1988”, see Mayor’s Order 89-86, April 28, 1989.

§ 7-503.03. Executive Director — Duties.

In order to carry out the purposes of this unit, the Director shall:

- (1) Serve as an advocate for the aged in the District of Columbia;
- (2) Contract with, and make grants to, public and private agencies using Older Americans Act funds, other federal funds received by the Office, and District government appropriated funds;
- (3) Provide information and technical assistance with respect to programs and services for the aged to the Mayor, the Commission on Aging, the Council of the District of Columbia, other District government agencies and departments, and the community, including, when necessary, contracting for consultant assistance outside the District government;
- (3A) Provide information, through the Office of the Chief Technology Officer, to District of Columbia residents on prescription drug savings available under and eligibility for the AccessRx program established by subchapter I of Chapter 8A of Title 48 [§ 48-831.01 et seq.];
- (4) Consider the advice and recommendations of the Commission in carrying out his responsibilities under this unit;
- (5) File an annual report on the operation of the Office and an analysis of the needs of the aged with the Mayor and the Council of the District of Columbia, and make it available to the public;
- (6) Publish a directory of services available to the aged through the District government and including, to the maximum extent possible, sources of nonpublic assistance and programs for the aged in the District of Columbia that directory shall be revised at least every 2 years;
- (7) Identify areas of need for service or improvement of service and bring them to the attention of the Mayor and Commission, with suggestions for meeting such needs, including conducting or funding research and demonstration projects to test such suggestions;
- (8) Carry responsibility for assuring necessary control, evaluation, audit, and reporting on programs funded through the Office;

(9) Prepare in timely fashion the state plan required under the Older Americans Act and forward it to the Commission for comment and Mayor for approval;

(10) Develop, with the advice of the Commission, a 5-year plan of policies, programs, services and activities to benefit aged residents of the District of Columbia. Such plan shall be reviewed and updated annually;

(11) Review and comment on proposed District and federal legislation, regulations, policies, and programs and make policy recommendations on issues affecting the health, safety, and welfare of the aged.

(Oct. 29, 1975, D.C. Law 1-24, title III, § 303, 22 DCR 2457; Sept. 14, 1976, D.C. Law 1-83, § 2, 23 DCR 2462; Dec. 7, 2004, D.C. Law 15-205, § 5602, 51 DCR 8441; Mar. 2, 2007, D.C. Law 16-191, § 31, 53 DCR 6794.)

Section references. — This section is referred to in § 7-504.09.

Prior Codifications. — 1981 Ed., § 6-2213. 1973 Ed., § 6-1713.

Effect of amendments. — D.C. Law 15-205 added par. (3A).

D.C. Law 16-191, in par. (3), substituted “community, including,” for “community. This shall include,”; and, in par. (6), substituted “Columbia that” for “Columbia. The”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 5602 of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 5602 of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 1-24. — For legislative history of D.C. Law 1-24, see Historical and Statutory Notes following § 7-501.01.

Legislative history of Law 1-83. — Law 1-83, the “District of Columbia Aging Act Amendments,” was introduced in Council and assigned Bill No. 1-249, which was referred to the Committee on Human Resources and Ag-

ing. The Bill was adopted on first and second readings on May 6, 1976 and May 20, 1976, respectively. Signed by the Mayor on June 18, 1976, it was assigned Act No. 1-132 and transmitted to both Houses of Congress for its review.

Legislative history of Law 15-205. — Law 15-205, the “Fiscal Year 2005 Budget Support Act of 2004”, was introduced in Council and assigned Bill No. 15-768, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 14, 2004, and June 29, 2004, respectively. Signed by the Mayor on August 2, 2004, it was assigned Act No. 15-487 and transmitted to both Houses of Congress for its review. D.C. Law 15-205 became effective on December 7, 2004.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 7-103.

Short title. — Short title of subtitle F of title V of Law 15-205: Section 5601 of D.C. Law 15-205 provided that subtitle F of title V of the act may be cited as the Office on Aging AccessRx Prescription Drug Assistance Amendment Act of 2004.

References in text. — The “Older Americans Act,” referred to in paragraphs (2) and (9), is codified at 42 U.S.C. § 3001 et seq.

§ 7-503.04. Impact statements.

All heads of departments and agencies of the District government are required at least 30 days prior to implementation of any proposed policies or programs that will have a major impact on the aged to submit such proposals to the Director for comment. If the impact of the proposal is determined by the Director to be adverse, he shall file a statement of this finding with the Mayor, the Commission, and the Council of the District of Columbia, as well as the originating department or agency.

(Oct. 29, 1975, D.C. Law 1-24, title III, § 304, 22 DCR 2459.)

Prior Codifications. — 1981 Ed., § 6-2214. legislative history of D.C. Law 1-24, see Historical and Statutory Notes following § 7-501.01.
1973 Ed., § 6-1714.
Legislative history of Law 1-24. — For

§ 7-503.05. Standards for grant and contract awards.

After consultation with the Commission on Aging established by § 7-504.01 the Director shall develop and publish the standards that the Office will use in making decisions on the award of grants and contracts.

(Oct. 29, 1975, D.C. Law 1-24, title III, § 305, 22 DCR 2459.)

Prior Codifications. — 1981 Ed., § 6-2215. legislative history of D.C. Law 1-24, see Historical and Statutory Notes following § 7-501.01.
1973 Ed., § 6-1715.
Legislative history of Law 1-24. — For

§ 7-503.06. Transfer of funds and positions from Division of Services to the Aging.

The Division of Services to the Aging presently located within the Department of Human Resources, and all positions and unexpended funds presently allocated to this Division are hereby transferred to the new Office created under § 7-503.01.

(Oct. 29, 1975, D.C. Law 1-24, title III, § 306, 22 DCR 2459.)

Prior Codifications. — 1981 Ed., § 6-2216. legislative history of D.C. Law 1-24, see Historical and Statutory Notes following § 7-501.01.
1973 Ed., § 6-1716.
Legislative history of Law 1-24. — For

Subchapter IV. Commission on Aging.

§ 7-504.01. Establishment.

There is hereby established a Commission on Aging to advise the Mayor, the Director of the Office on Aging, the Council of the District of Columbia, and the public concerning the views and needs of the aged in the District of Columbia.

(Oct. 29, 1975, D.C. Law 1-24, title IV, § 401, 22 DCR 2460; Oct. 17, 1981, D.C. Law 4-42, § 9(b)(2), 28 DCR 3425.)

Section references. — This section is referred to in §§ 7-502.01 and 7-503.05.

Prior Codifications. — 1981 Ed., § 6-2221.
1973 Ed., § 6-1721.

Legislative history of Law 1-24. — For legislative history of D.C. Law 1-24, see Historical and Statutory Notes following § 7-501.01.

Legislative history of Law 4-42. — Law 4-42, the "Governmental Reorganization Proce-

dures Act of 1981," was introduced in Council and assigned Bill No. 4-197, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 16, 1981, and June 30, 1981, respectively. Signed by the Mayor on July 23, 1981, it was assigned Act No. 4-71 and transmitted to both Houses of Congress for its review.

§ 7-504.02. Composition; appointment.

When a vacancy develops on the Commission, the Mayor may appoint a successor to fill the unexpired portion of a term.

(Oct. 29, 1975, D.C. Law 1-24, title IV, § 402, 22 DCR 2460; June 12, 1999, D.C. Law 12-285, § 4(i), 46 DCR 1355; Oct. 14, 1999, D.C. Law 13-49, § 5, 46 DCR 5153.)

Prior Codifications. — 1981 Ed., § 6-2222. 1973 Ed., § 6-1722.

Effect of amendments. — D.C. Law 13-49 rewrote this section, which previously read:

“The Commission shall consist of 15 public (voting) members appointed by the Mayor. At least one-half of the membership of the Commission shall consist of actual consumers of services under this program, including low income and minority older persons, at least in proportion to the number of minority older persons in the District of Columbia. There shall also be the following ex officio members: The Directors of the Department of Human Services, the Department of Housing and Community Development, the Department of Recreation, the Department of Transportation, the Department of Employment Services, the Public Library, the Chief of the Metropolitan Police Department (or the Director or Chief of such successor agencies), and a member of the Council of the District of Columbia.”

Emergency legislation. — For temporary amendment of section, see § 4(i) of the Confirmation Emergency Amendment Act of 1999 (D.C. Act 13-25, March 15, 1999, 46 DCR 2971).

For temporary (90-day) amendment of section, see § 4(i) of the Confirmation Act Congressional Review Emergency Amendment Act

of 1999 (D.C. Act 13-92, June 4, 1999, 46 DCR 5330).

Legislative history of Law 1-24. — For legislative history of D.C. Law 1-24, see Historical and Statutory Notes following § 7-501.01.

Legislative history of Law 12-285. — Law 12-285, the “Confirmation Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-261, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Vetoed by the Mayor on December 29, 1998, Council overrode the veto on January 5, 1999 and the Bill was assigned Act No. 12-622 and transmitted to both Houses of Congress for its review. D.C. Law 12-285 became effective on June 12, 1999.

Legislative history of Law 13-49. — Law 13-49, the “Criminal Code and Clarifying Technical Amendments Act of 1999,” was introduced in Council and assigned Bill No. 13-61, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on March 2, 1999, and April 13, 1999, respectively. Signed by the Mayor on May 13, 1999, it was assigned Act No. 13-69 and transmitted to both Houses of Congress for its review. D.C. Law 13-49 became effective on October 19, 1999.

§ 7-504.03. Qualifications.

Members shall be appointed with due consideration for fair geographical distribution, representation from organizations of older persons, public and voluntary agencies concerned with the aged, and members of the general public who have given evidence of particular dedication to and understanding of the needs of the aged. At least 8 members shall be 60 years of age or over, and all must be residents of the District of Columbia.

(Oct. 29, 1975, D.C. Law 1-24, title IV, § 403, 22 DCR 2460.)

Prior Codifications. — 1981 Ed., § 6-2223. 1973 Ed., § 6-1723.

Legislative history of Law 1-24. — For

legislative history of D.C. Law 1-24, see Historical and Statutory Notes following § 7-501.01.

§ 7-504.04. Term of office.

Members of the Commission shall serve terms not to exceed 3 years, which shall regularly commence on October 29th in the year of appointment and expire on October 28th 3 years later. The terms shall be staggered so that 5 terms expire each year on October 28th. Members may be reappointed but may not serve more than 2 consecutive terms.

(Oct. 29, 1975, D.C. Law 1-24, title IV, § 404, 22 DCR 2461; Mar. 10, 1982, D.C. Law 4-73, § 4(c), 28 DCR 5276.)

Prior Codifications. — 1981 Ed., § 6-2224. 1973 Ed., § 6-1724.
Legislative history of Law 1-24. — For

legislative history of D.C. Law 1-24, see Historical and Statutory Notes following § 7-501.01. See note § 47-850.

§ 7-504.05. Vacancies.

When a vacancy develops on the Commission, the Mayor with the advice and consent of the Council of the District of Columbia may appoint a successor to fill the unexpired portion of the term. A member may continue to serve beyond the expiration date of the member's term until a successor is duly qualified. If within 30 calendar days of development of a vacancy on the Commission the Mayor fails to transmit to the Council of the District of Columbia a nomination for that vacancy, the Council of the District of Columbia may make the appointment. If within 60 calendar days of submission of a nomination for the Commission the Council of the District of Columbia fails to act, the nomination shall be deemed confirmed.

(Oct. 29, 1975, D.C. Law 1-24, title IV, § 405, 22 DCR 2461; Sept. 29, 1988, D.C. Law § 7-152, § 2, 35 DCR 5704.)

Prior Codifications. — 1981 Ed., § 6-2225. 1973 Ed., § 6-1725.

Legislative history of Law 1-24. — For legislative history of D.C. Law 1-24, see Historical and Statutory Notes following § 7-501.01.

Legislative history of Law 7-152. — Law 7-152, the "District of Columbia Act on the Aging Amendment Act of 1988," was introduced

in Council and assigned Bill No. 7-363, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 28, 1988 and July 12, 1988, respectively. Signed by the Mayor on July 15, 1988, it was assigned Act No. 7-207 and transmitted to both Houses of Congress for its review.

§ 7-504.06. Rules of procedure.

The Commission shall develop its own rules of procedure, except they shall provide that the Commission shall meet at least every other month.

(Oct. 29, 1975, D.C. Law 1-24, title IV, § 406, 22 DCR 2461.)

Prior Codifications. — 1981 Ed., § 6-2226. 1973 Ed., § 6-1726.
Legislative history of Law 1-24. — For

legislative history of D.C. Law 1-24, see Historical and Statutory Notes following § 7-501.01.

§ 7-504.07. Chairperson.

The Commission shall select its own Chairperson, by vote.

(Oct. 29, 1975, D.C. Law 1-24, title IV, § 407, 22 DCR 2461.)

Prior Codifications. — 1981 Ed., § 6-2227. 1973 Ed., § 6-1727.
Legislative history of Law 1-24. — For

legislative history of D.C. Law 1-24, see Historical and Statutory Notes following § 7-501.01.

§ 7-504.08. Compensation; expenses.

All members shall serve without compensation, but expenses incurred by the Commission as a whole, or by its individual members, when duly authorized, will become an obligation against appropriate District government and federal funds designated for that purpose.

(Oct. 29, 1975, D.C. Law 1-24, title IV, § 408, 22 DCR 2462.)

Prior Codifications. — 1981 Ed., § 6-2228. legislative history of D.C. Law 1-24, see Historical and Statutory Notes following § 7-501.01.
1973 Ed., § 6-1728.

Legislative history of Law 1-24. — For

§ 7-504.09. Staff; technical assistance.

Necessary staff services shall be supplied in accordance with positions and funding approved in the current District government budget. In addition, the Director of the Office on Aging shall provide information and technical assistance as required under § 7-503.03.

(Oct. 29, 1975, D.C. Law 1-24, title IV, § 409, 22 DCR 2462.)

Prior Codifications. — 1981 Ed., § 6-2229. legislative history of D.C. Law 1-24, see Historical and Statutory Notes following § 7-501.01.
1973 Ed., § 6-1729.

Legislative history of Law 1-24. — For

§ 7-504.10. Duties.

The Commission on Aging shall:

- (1) Serve as an advocate for older persons in the District of Columbia;
- (2) Review and submit to the Mayor, the Council of the District of Columbia, and the Office on Aging, an annual report including comments on the analysis of the needs of the aged in the District of Columbia made in the report of the Director;
- (3) Advise the Director on cooperation with federal, state, and private agencies concerned with activities pertaining to the aged;
- (4) Review and comment on the annual state plan required under the Older Americans Act. The statement of the Commission shall be transmitted to the Department of Health and Human Services with the plan;
- (5) Develop a list of not more than 3 persons the Commission recommends for the position of Director of the Office on Aging, whenever that position is vacant, and submit that list to the Mayor;
- (6) Conduct or participate in public hearings and other forums to determine views of older persons and other members of the public on matters affecting the health, safety and welfare of the aged in the District of Columbia;
- (7) Bring to the attention of the Mayor and the Office on Aging cases of neglect and abuse of the aged and incidents of bias against the aged in the administration of the laws of the District of Columbia;
- (8) Review and comment on the Director's review of proposed District and federal legislation, regulations, policies and programs, and comment on the

Director's policy recommendations on issues affecting the health, safety, and welfare of the aged;

(9) Provide a continuing review of the activities of the Office on Aging and issue reports thereon at least annually.

(Oct. 29, 1975, D.C. Law 1-24, title IV, § 410, 22 DCR 2462; Sept. 14, 1976, D.C. Law 1-83, § 3, 23 DCR 2462.)

Prior Codifications. — 1981 Ed., § 6-2230. 1973 Ed., § 6-1730.

Legislative history of Law 1-24. — For legislative history of D.C. Law 1-24, see Historical and Statutory Notes following § 7-501.01.

Legislative history of Law 1-83. — For

legislative history of D.C. Law 1-83, see Historical and Statutory Notes following § 7-503.03.

References in text. — The "Older Americans Act," referred to in paragraph (4), is codified at 42 U.S.C. § 3001 et seq.

Unit B. Volunteer Service Credit Program.

§ 7-531.01. Definitions.

For the purposes of this unit, the term:

(1) "District" means the District of Columbia.

(2) "Eligible person" means an individual who is 60 years of age or older or is mentally or physically ill, infirm, or has a disability.

(3) "Service credit" means the unit of exchange upon which the volunteer service credit program operates.

(4) "Sponsor" means a nonprofit organization or a consortium of nonprofit organizations that receives and dispenses service credits on behalf of eligible persons and is designated by the Mayor to perform the administrative tasks necessary to implement this unit.

(5) "Targeted service" means a task for which service credits may be earned when performed by a volunteer for an eligible person.

(6) "Volunteer" means an individual who earns service credits by:

(A) Providing targeted services to an eligible person not related to him or her by blood, marriage, guardianship, or adoption;

(B) Providing services under a demonstration project;

(C) Participating in pre-service or in-service training under the volunteer service credit program or a demonstration project; or

(D) Performing administrative tasks in direct support of the volunteer service credit program or a demonstration project.

(Sept. 13, 1986, D.C. Law 6-143, § 2, 33 DCR 4372; Apr. 24, 2007, D.C. Law 16-305, § 23, 53 DCR 6198.)

Section references. — This section is referred to in § 7-531.07.

Prior Codifications. — 1981 Ed., § 6-2241.

Effect of amendments. — D.C. Law 16-305, in par. (2), substituted "infirm, or has a disability" for "disabled, or infirm".

Legislative history of Law 6-143. — Law 6-143, the "Volunteer Service Credit Program Act of 1986," was introduced in Council and

assigned Bill No. 6-282, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 10, 1986 and June 24, 1986, respectively. Signed by the Mayor on July 8, 1986, it was assigned Act No. 6-185 and transmitted to both Houses of Congress for its review.

Legislative history of Law 16-305. — Law 16-305, the "People First Respectful Language

Modernization Act of 2006", was introduced in Council and assigned Bill No. 16-664, which was referred to Committee on the Whole. The Bill was adopted on first and second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 17, 2006, it

was assigned Act No. 16-437 and transmitted to both Houses of Congress for its review. D.C. Law 16-305 became effective on April 24, 2007.

Delegation of Authority. — Delegation of authority pursuant to Law 6-143, see Mayor's Order 87-140, June 16, 1987.

§ 7-531.02. Establishment of pilot volunteer service credit program.

(a) Within 8 months after September 13, 1986, the Mayor shall establish a 3-year pilot volunteer service credit program ("program") through which individuals may volunteer targeted services and in return earn service credits that may be subsequently exchanged for targeted services. To implement the program, the Mayor may award grants and contracts to approved sponsors. The Mayor shall widely publicize a description of the program and a contact telephone number and address for those who may wish to participate.

(b)(1) The Mayor shall ensure that the District government or a sponsor maintains a computerized, District-wide register containing:

(A) The names of participating volunteers, services for which they are available, and any other personal information relevant to the program;

(B) An accounting system with the capacity to make available to the Mayor, each sponsor, and each volunteer a monthly balance of service credits earned and used; and

(C) Any other data that may be needed to monitor and administer the program and any demonstration projects undertaken pursuant to § 7-531.07.

(2) The register required by this subsection shall be used solely to match volunteers with eligible persons and to accomplish other tasks consistent with the purposes of this unit.

(Sept. 13, 1986, D.C. Law 6-143, § 3, 33 DCR 4372.)

Prior Codifications. — 1981 Ed., § 6-2242.

Legislative history of Law 6-143. — For legislative history of D.C. Law 6-143, see His-

torical and Statutory Notes following § 7-531.01.

§ 7-531.03. Targeted services.

Targeted services shall consist of those tasks that the Mayor has determined will foster the independence, self-sufficiency, and noninstitutionalized living of eligible persons and shall fall within the following categories:

(1) Those tasks, such as respite care, personal grooming, and meal preparation, that, when performed in the home, address the personal care needs of an eligible person;

(2) Those tasks, such as light housekeeping, heavy cleaning, and minor repairs, that, when performed in or around the home, address the environmental needs of an eligible person;

(3) Those tasks, such as exercise and recreational therapy, that address the physical or rehabilitative needs of an eligible person; and

(4) Those tasks, such as transportation and escort, that address the ability of an eligible person to function outside the home.

(Sept. 13, 1986, D.C. Law 6-143, § 4, 33 DCR 4372.)

Prior Codifications. — 1981 Ed., § 6-2243. **Legislative history of Law 6-143.** — For legislative history of D.C. Law 6-143, see Historical and Statutory Notes following § 7-531.01.

§ 7-531.04. Service credits.

(a) To initiate the program, the Mayor shall establish a pool of service credits to be awarded to eligible persons who are in need of targeted services. The Mayor may award credits to eligible persons directly from this pool or may distribute all or part of these credits to sponsors who shall in turn be authorized to award them. The awarding of credits to eligible persons shall be commensurate with the availability of volunteers.

(b) In addition to the pool of service credits established under subsection (a) of this section, a sponsor may, with the prior written approval of the Mayor, establish its own pool of service credits to be awarded to eligible persons. In order to receive this approval, a sponsor shall satisfy the Mayor that it has resources and contingency plans sufficient to meet the obligations imposed by § 7-531.05.

(c)(1) Volunteers who provide targeted services shall earn 1 service credit for each hour of targeted services provided.

(2) If authorized by the Mayor, volunteers may also earn service credits for the completion of pre-service and in-service training and for the performance of administrative tasks in direct support of the program. Service credits earned in this manner shall be computed at a rate of 1 credit for every 2 hours of training or administrative service.

(d)(1) A volunteer who has service credits may transfer all or part of those credits, either directly or through a sponsor, to an eligible person. Credits thus transferred may not be retransferred.

(2) A volunteer who has service credits may transfer all or part of those credits to the Mayor or a sponsor for the purpose of replenishing a pool of service credits established under subsection (a) or (b) of this section.

(e) Except as otherwise provided by § 7-531.05 or the rules issued by the Mayor under § 7-531.10, an eligible person may at any time exchange service credits that he or she has earned, received by transfer, or been awarded for an equal number of hours of any targeted service. The Mayor or a sponsor shall determine whether a requested service is a targeted service and whether the requestor is an eligible person.

(Sept. 13, 1986, D.C. Law 6-143, § 5, 33 DCR 4372.)

Section references. — This section is referred to in § 7-531.05.

Prior Codifications. — 1981 Ed., § 6-2244. **Legislative history of Law 6-143.** — For legislative history of D.C. Law 6-143, see Historical and Statutory Notes following § 7-531.01.

§ 7-531.05. Service credit guarantee.

(a) To ensure that outstanding service credits are promptly honored when

exchanged for targeted services, the Mayor and each sponsor shall develop contingency plans and engage in diligent volunteer recruitment. Except as otherwise provided in subsections (b) and (c) of this section, the Mayor shall guarantee all outstanding credits from the pool of service credits established under § 7-531.04(a), and a sponsor shall guarantee all outstanding credits from any pool of service credits it has established under § 7-531.04(b). Under these guarantees the Mayor or a sponsor shall ensure the provision of a targeted service, even if a volunteer is unavailable, within 10 days after an eligible person with service credits requests that service.

(b) If the program expires or is terminated, the Mayor shall promptly give written notice to all sponsors and persons known to have outstanding credits from the pool of service credits established under § 7-531.04(a). Each sponsor shall promptly give written notice of the expiration or termination to all persons known to have outstanding credits from any pool of service credits it has established under § 7-531.04(b). The guarantees required by subsection (a) of this section shall cover all requests for targeted services made within 6 months after written notice is given under this subsection.

(c) Service credit guarantees established by this section shall not apply to those requested services that are required by District law to be performed by licensed individuals.

(Sept. 13, 1986, D.C. Law 6-143, § 6, 33 DCR 4372.)

Section references. — This section is referred to in §§ 7-531.04 and 7-531.07.

Prior Codifications. — 1981 Ed., § 6-2245.

Legislative history of Law 6-143. — For

legislative history of D.C. Law 6-143, see Historical and Statutory Notes following § 7-531.01.

§ 7-531.06. Advisory committees.

Each sponsor shall have an advisory committee composed of persons skilled in the provision of targeted services and persons who represent or advocate the interests of eligible persons. An advisory committee shall monitor the sponsor's compliance with program requirements, make recommendations to the sponsor on program implementation, and carry out any other program-related tasks that the Mayor deems appropriate.

(Sept. 13, 1986, D.C. Law 6-143, § 7, 33 DCR 4372.)

Prior Codifications. — 1981 Ed., § 6-2246.

Legislative history of Law 6-143. — For

legislative history of D.C. Law 6-143, see His-

torical and Statutory Notes following § 7-531.01.

§ 7-531.07. Demonstration projects.

In addition to the volunteer service credit program, the Mayor may establish service credit demonstration projects, such as an intergenerational service program involving recipients who would not otherwise qualify as "eligible persons" under § 7-531.01(2). Services provided through these demonstration projects shall earn service credits but shall not be covered by the provisions of § 7-531.05.

(Sept. 13, 1986, D.C. Law 6-143, § 8, 33 DCR 4372.)

Section references. — This section is referred to in §§ 7-531.02 and 7-531.11.
Prior Codifications. — 1981 Ed., § 6-2247.
Legislative history of Law 6-143. — For legislative history of D.C. Law 6-143, see Historical and Statutory Notes following § 7-531.01.

§ 7-531.08. Status of volunteers; reimbursement.

Volunteers shall not, by virtue of their participation in the program or a demonstration project, be entitled to monetary compensation or considered for any purpose to be employees or agents of either the District or a sponsor. Sponsors may reimburse volunteers for necessary expenses incident to their provision of targeted or demonstration project services, attendance at pre-service or in-service training, or performance of administrative tasks in direct support of the program or demonstration project.

(Sept. 13, 1986, D.C. Law 6-143, § 9, 33 DCR 4372.)

Prior Codifications. — 1981 Ed., § 6-2248.
Legislative history of Law 6-143. — For torical and Statutory Notes following § 7-531.01.
 legislative history of D.C. Law 6-143, see His-

§ 7-531.09. Qualified immunity.

With respect to their participation in the program or a demonstration project, the District government and its agencies, officials, and employees and sponsors and their advisory committees, officials, and employees shall be immune from civil or criminal liability if they have acted in good faith. This immunity shall not apply to volunteers.

(Sept. 13, 1986, D.C. Law 6-143, § 10, 33 DCR 4372.)

Prior Codifications. — 1981 Ed., § 6-2249.
Legislative history of Law 6-143. — For torical and Statutory Notes following § 7-531.01.
 legislative history of D.C. Law 6-143, see His-

§ 7-531.10. Rules.

The Mayor shall, within 8 months after September 13, 1986, and pursuant to subchapter I of Chapter 5 of Title 2, issue all rules necessary to carry out the purposes of this unit. These rules may include, but shall not necessarily be limited to, standards and procedures with respect to the following:

- (1) Volunteer qualifications, screening, pre-service and in-service training, monitoring, and termination;
- (2) Minimum liability and accident insurance for volunteers;
- (3) Sponsor qualifications;
- (4) The awarding of service credits;
- (5) Minimum hours that a volunteer must be available;
- (6) Weekly and annual limits on the number of service credits a volunteer may earn;

- (7) The delayed vesting of or ability to use service credits earned for pre-service training or the performance of administrative tasks;
- (8) Mayoral and sponsor notification of service credit transfers;
- (9) Contingency planning and volunteer reserves;
- (10) Program evaluation and the responsibilities of sponsor advisory committees; and
- (11) Demonstration projects.

(Sept. 13, 1986, D.C. Law 6-143, § 11, 33 DCR 4372.)

Section references. — This section is referred to in § 7-531.04.

Prior Codifications. — 1981 Ed., § 6-2250.

Legislative history of Law 6-143. — For

legislative history of D.C. Law 6-143, see Historical and Statutory Notes following § 7-531.01.

§ 7-531.11. Reporting to Council.

The Mayor shall prepare and submit to the Council annual reports on the volunteer service credit program and any demonstration projects established under § 7-531.07. These reports shall at a minimum include:

- (1) A description of the participating population, including the number or persons served and the services provided;
- (2) The number of service credits outstanding at the conclusion of the reporting period;
- (3) Program costs, including the cost to the District government of honoring service credits when volunteers have been unavailable;
- (4) A description of any positive or negative effects on other volunteer activities;
- (5) A program evaluation, including an assessment of the quality of services provided, participant satisfaction, and the need to increase or decrease the categories of targeted services or the hours of service availability; and
- (6) Recommendations regarding continuation of the program or amendments to this unit.

(Sept. 13, 1986, D.C. Law 6-143, § 12, 33 DCR 4372.)

Prior Codifications. — 1981 Ed., § 6-2251.

Legislative history of Law 6-143. — For legislative history of D.C. Law 6-143, see His-

torical and Statutory Notes following § 7-531.01.

CHAPTER 6. DEATH.

Subchapter I. Determination of Death

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Subchapter II. Natural Death

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Subchapter I. Determination of Death.

§ 7-601. Standard.

An individual who has sustained either: (1) irreversible cessation of circulatory and respiratory functions; or (2) irreversible cessation of all functions of the entire brain, including the brain stem; is dead. A determination of death must be made in accordance with accepted medical standards.

(Feb. 25, 1982, D.C. Law 4-68, § 2, 28 DCR 5045.)

Prior Codifications. — 1981 Ed., § 6-2401.

Legislative history of Law 4-68. — Law 4-68, the "Uniform Determination of Death Act of 1981," was introduced in Council and assigned Bill No. 4-206, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on September 29, 1981, and October 13, 1981, respec-

tively. Signed by the Mayor on November 9, 1981, it was assigned Act No. 4-114 and transmitted to both Houses of Congress for its review.

Editor's notes. — Uniform Law: This section is based upon § 1 of the Uniform Determination of Death Act.

Subchapter II. Natural Death.

§ 7-621. Definitions.

For the purposes of this subchapter, the term:

(1) "Attending physician" means the physician selected by, or assigned to, the patient who has primary responsibility for the treatment and care of the patient.

(2) "Declaration" means a witnessed document in writing, voluntarily executed by the declarant in accordance with the requirements of § 7-622.

(2A) "Domestic partnership" shall have the same meaning as provided in § 32-701(4).

(3) "Life-sustaining procedure" means any medical procedure or intervention, which, when applied to a qualified patient, would serve only to artificially prolong the dying process and where, in the judgment of the attending physician and a second physician, death will occur whether or not such procedure or intervention is utilized. The term "life-sustaining procedure" shall not include the administration of medication or the performance of any medical procedure deemed necessary to provide comfort care or to alleviate pain.

(4) “Physician” means a person authorized to practice medicine in the District of Columbia.

(5) “Qualified patient” means a patient who has executed a declaration in accordance with this subchapter and who has been diagnosed and certified in writing to have a terminal condition by 2 physicians who have personally examined the patient, one of whom shall be the attending physician.

(6) “Terminal condition” means an incurable condition caused by injury, disease, or illness, which, regardless of the application of life-sustaining procedures, would, within reasonable medical judgment, produce death, and where the application of life-sustaining procedures serve only to postpone the moment of death of the patient.

(Feb. 25, 1982, D.C. Law 4-69, § 2, 28 DCR 5047; Apr. 24, 2007, D.C. Law 16-305, § 24, 53 DCR 6198; Sept. 12, 2008, D.C. Law 17-231, § 16(a), 55 DCR 6758.)

Section references. — This section is referred to in § 7-625.

Prior Codifications. — 1981 Ed., § 6-2421.

Effect of amendments. — D.C. Law 16-305, in par. (5), substituted “have” for “be afflicted with”.

D.C. Law 17-231 added par. (2A).

Legislative history of Law 4-69. — Law 4-69, the “Natural Death Act of 1981,” was introduced in Council and assigned Bill No. 4-204, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on September 29, 1981, and October 13, 1981, respectively. Signed by the Mayor on November 9, 1981, it was assigned Act No. 4-115 and transmitted to both Houses of Congress for its review.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 7-531.01.

Legislative history of Law 17-231. — Law 17-231, the “Omnibus Domestic Partnership Equality Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-135, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on April 1, 2008, and May 6, 2008, respectively. Signed by the Mayor on June 6, 2008, it was assigned Act No. 17-403 and transmitted to both Houses of Congress for its review. D.C. Law 17-231 became effective on September 12, 2008.

CASE NOTES

In general.

While preservation of life in abstract is no doubt a transcendent goal for any society which values human life, state’s interest in maintaining life must defer to right to refuse treatment of a competent, emotionally stable, but terminally ill adult whose death is imminent and who is, therefore, the best, indeed, the only, true judge of how such life as remains to him may best be spent. *Tune v. Walter Reed Army Medical Hospital*, 602 F. Supp. 1452, 1985 U.S. Dist. LEXIS 22089 (1985).

Competent adult patient of federal medical facility with terminal illness had right to decide

that artificial life-support systems be removed, although such would likely result in her immediate death. *Tune v. Walter Reed Army Medical Hospital*, 602 F. Supp. 1452, 1985 U.S. Dist. LEXIS 22089 (1985).

Competent adult patients of federal medical facility for terminal illnesses have a right to determine for themselves whether to allow lives to be prolonged by artificial means, including right to demand cessation of life support once begun. *Tune v. Walter Reed Army Medical Hospital*, 602 F. Supp. 1452, 1985 U.S. Dist. LEXIS 22089 (1985).

§ 7-622. Declaration — Execution; form.

(a) Any persons 18 years of age or older may execute a declaration directing the withholding or withdrawal of life-sustaining procedures from themselves

should they be in a terminal condition. The declaration made pursuant to this subchapter shall be:

- (1) In writing;
- (2) Signed by the person making the declaration or by another person in the declarant's presence at the declarant's express direction;
- (3) Dated; and
- (4) Signed in the presence of 2 or more witnesses at least 18 years of age.

In addition, a witness shall not be:

(A) The person who signed the declaration on behalf of and at the direction of the declarant;

(B) Related to the declarant by blood, marriage, or domestic partnership;

(C) Entitled to any portion of the estate of the declarant according to the laws of intestate succession of the District of Columbia or under any will of the declarant or codicil thereto;

(D) Directly financially responsible for declarant's medical care; or

(E) The attending physician, an employee of the attending physician, or an employee of the health facility in which the declarant is a patient.

(b) It shall be the responsibility of the declarant to provide for notification to his or her attending physician of the existence of the declaration. An attending physician, when presented with the declaration, shall make the declaration or a copy of the declaration a part of the declarant's medical records.

(c) The declaration shall be substantially in the following form, but in addition may include other specific directions not inconsistent with other provisions of this subchapter. Should any of the other specific directions be held to be invalid, such invalidity shall not affect other directions of the declaration which can be given effect without the invalid direction, and to this end the directions in the declaration are severable.

Declaration

Declaration made this day of (month, year).

I,, being of sound mind, willfully and voluntarily make known my desires that my dying shall not be artificially prolonged under the circumstances set forth below, do declare:

If at any time I should have an incurable injury, disease, or illness certified to be a terminal condition by 2 physicians who have personally examined me, one of whom shall be my attending physician, and the physicians have determined that my death will occur whether or not life-sustaining procedures are utilized and where the application of life-sustaining procedures would serve only to artificially prolong the dying process, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication or the performance of any medical procedure deemed necessary to provide me with comfort care or to alleviate pain.

In the absence of my ability to give directions regarding the use of such life-sustaining procedures, it is my intention that this declaration shall be

honored by my family and physician(s) as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences from such refusal.

I understand the full import of this declaration and I am emotionally and mentally competent to make this declaration.

Signed

Address

I believe the declarant to be of sound mind. I did not sign the declarant's signature above for or at the direction of the declarant. I am at least 18 years of age and am not related to the declarant by blood, marriage, or domestic partnership, entitled to any portion of the estate of the declarant according to the laws of intestate succession of the District of Columbia or under any will of the declarant or codicil thereto, or directly financially responsible for declarant's medical care. I am not the declarant's attending physician, an employee of the attending physician, or an employee of the health facility in which the declarant is a patient.

Witness

Witness

(Feb. 25, 1982, D.C. Law 4-69, § 3, 28 DCR 5047; Sept. 12, 2008, D.C. Law 17-231, § 16(b), 55 DCR 6758.)

Section references. — This section is referred to in §§ 7-621, 7-623, 7-626, and 7-628.

Prior Codifications. — 1981 Ed., § 6-2422.

Effect of amendments. — D.C. Law 17-231 substituted "blood, marriage, or domestic partnership" for "blood or marriage".

Legislative history of Law 4-69. — For legislative history of D.C. Law 4-69, see Historical and Statutory Notes following § 7-621.

Legislative history of Law 17-231. — For Law 17-231, see notes following § 7-621.

§ 7-623. Declaration — Restrictions.

A declaration shall have no effect if the declarant is a patient in an intermediate care or skilled care facility as defined in the Health Care Facilities Regulation, enacted June 14, 1974 (Reg. 74-15; 20 DCR 1423) at the time the declaration is executed unless 1 of the 2 witnesses to the directive is a patient advocate or ombudsman. The patient advocate or ombudsman shall have the same qualifications as a witness under § 7-622.

(Feb. 25, 1982, D.C. Law 4-69, § 4, 28 DCR 5047.)

Prior Codifications. — 1981 Ed., § 6-2423.

Legislative history of Law 4-69. — For

legislative history of D.C. Law 4-69, see Historical and Statutory Notes following § 7-621.

§ 7-624. Declaration — Revocation.

(a) A declaration may be revoked at any time only by the declarant or at the express direction of the declarant, without regard to the declarant's mental state by any of the following methods:

(1) By being obliterated, burnt, torn, or otherwise destroyed or defaced by the declarant or by some person in the declarant's presence and at his or her direction;

(2) By a written revocation of the declaration signed and dated by the declarant or person acting at the direction of the declarant. Such revocation shall become effective only upon communication of the revocation to the attending physician by the declarant or by a person acting on behalf of the declarant. The attending physician shall record in the patient's medical record the time and date when he or she receives notification of the written revocation; or

(3) By a verbal expression of the intent to revoke the declaration, in the presence of a witness 18 years or older who signs and dates a writing confirming that such expression of intent was made. Any verbal revocation shall become effective only upon communication of the revocation to the attending physician by the declarant or by a person acting on behalf of the declarant. The attending physician shall record, in the patient's medical record, the time, date, and place of when he or she receives notification of the revocation.

(b) There shall be no criminal or civil liability on the part of any person for failure to act upon a revocation made pursuant to this section unless that person has actual knowledge of the revocation.

(Feb. 25, 1982, D.C. Law 4-69, § 5, 28 DCR 5047.)

Prior Codifications. — 1981 Ed., § 6-2424. **Legislative history of Law 4-69.** — For legislative history of D.C. Law 4-69, see Historical and Statutory Notes following § 7-621.

§ 7-625. Physician's duty to confirm terminal condition.

(a) An attending physician who has been notified of the existence of a declaration executed under this subchapter, without delay after the diagnosis of a terminal condition of the declarant, shall take the necessary steps to provide for written certification and confirmation of the declarant's terminal condition, so that the declarant may be deemed to be a qualified patient under this subchapter.

(b) Once written certification and confirmation of the declarant's terminal condition is made a person becomes a qualified patient under this subchapter only if the attending physician verbally or in writing informs the patient of his or her terminal condition and documents such communication in the patient's medical record. If the patient is diagnosed as unable to comprehend verbal or written communications, such patient shall become a qualified patient as defined in § 7-621, immediately upon written certification and confirmation of his or her terminal condition by the attending physician.

(c) An attending physician who does not comply with this section shall be considered to have committed an act of unprofessional conduct under § 3-2926.

(Feb. 25, 1982, D.C. Law 4-69, § 6, 28 DCR 5047.)

Prior Codifications. — 1981 Ed., § 6-2425. **Legislative history of Law 4-69.** — For legislative history of D.C. Law 4-69, see Historical and Statutory Notes following § 7-621. **References in text.** — Section 3-2926 referred to in subsection (c), was repealed by § 1104(e) of D.C. Law 6-99, effective March 25, 1986.

§ 7-626. Competency and intent of declarant.

(a) The desires of a qualified patient shall at all times supersede the effect of the declaration.

(b) If the qualified patient is incompetent at the time of the decision to withhold or withdraw life-sustaining procedures, a declaration executed in accordance with § 7-622 is presumed to be valid. For the purpose of this subchapter, a physician or health facility may presume in the absence of actual notice to the contrary that an individual who executed a declaration was of sound mind when it was executed. The fact of an individual's having executed a declaration shall not be considered as an indication of a declarant's mental incompetency.

(Feb. 25, 1982, D.C. Law 4-69, § 7, 28 DCR 5047.)

Prior Codifications. — 1981 Ed., § 6-2426. legislative history of D.C. Law 4-69, see Historical and Statutory Notes following § 7-621.
Legislative history of Law 4-69. — For

§ 7-627. Extent of medical liability; transfer of patient; criminal offenses.

(a) No physician, licensed health care professional, health facility, or employee thereof who in good faith and pursuant to reasonable medical standards causes or participates in the withholding or withdrawing of life-sustaining procedures from a qualified patient pursuant to a declaration made in accordance with this subchapter shall, as a result thereof, be subject to criminal or civil liability, or be found to have committed an act of unprofessional conduct.

(b) An attending physician who cannot comply with the declaration of a qualified patient pursuant to this subchapter shall, in conjunction with the next of kin of the patient or other responsible individual, effect the transfer of the qualified patient to another physician who will honor the declaration of the qualified patient. Transfer under these circumstances shall not constitute abandonment. Failure of an attending physician to effect the transfer of the qualified patient according to this section, in the event he or she cannot comply with the directive, shall constitute unprofessional conduct as defined in § 3-2926 [repealed].

(c) Any person who willfully conceals, cancels, defaces, obliterates, or damages the declaration of another without the declarant's consent or who falsifies or forges a revocation of the declaration of another shall commit an offense, and upon conviction shall be fined an amount not to exceed \$5,000 or be imprisoned for a period not to exceed 3 years, or both.

(d) Any person who falsifies or forges the declaration of another, or willfully conceals or withholds personal knowledge of the revocation of a declaration, with the intent to cause a withholding or withdrawal of life-sustaining procedures, contrary to the wishes of the declarant, and thereby, because of such act, directly causes life-sustaining procedures to be withheld or withdrawn and death to be hastened, shall be subject to prosecution for unlawful homicide pursuant to § 22-2101.

(Feb. 25, 1982, D.C. Law 4-69, § 8, 28 DCR 5047.)

Prior Codifications. — 1981 Ed., § 6-2427.
Legislative history of Law 4-69. — For legislative history of D.C. Law 4-69, see Historical and Statutory Notes following § 7-621.

References in text. — Section 3-2926, referred to in subsection (b), was repealed by § 1104(e) of D.C. Law 6-99, effective March 25, 1986.

§ 7-628. Exclusion of suicide; effect of declaration upon issuance.

(a) The withholding or withdrawal of life-sustaining procedures from a qualified patient in accordance with the provisions of this subchapter shall not, for any purpose, constitute a suicide and shall not constitute the crime of assisting suicide.

(b) The making of a declaration pursuant to § 7-622 shall not affect in any manner the sale, procurement, or issuance of any policy of life insurance, nor shall it be deemed to modify the terms of an existing policy of life insurance. No policy of life insurance shall be legally impaired or invalidated in any manner by the withholding or withdrawal of life-sustaining procedures from an insured qualified patient, notwithstanding any term of the policy to the contrary.

(c) No physician, health facility, or other health care provider, and no health care service plan, health maintenance organization, insurer issuing disability insurance, self-insured employee welfare benefit plan, nonprofit medical service corporation, or mutual nonprofit hospital service corporation shall require any person to execute a declaration as a condition for being insured for, or receiving, health care services.

(Feb. 25, 1982, D.C. Law 4-69, § 9, 28 DCR 5047.)

Prior Codifications. — 1981 Ed., § 6-2428.
Legislative history of Law 4-69. — For legislative history of D.C. Law 4-69, see Historical and Statutory Notes following § 7-621.

§ 7-629. Preservation of existing rights.

(a) Nothing in this subchapter shall impair or supersede any legal right or legal responsibility which any person may have to effect the withholding or withdrawal of life-sustaining procedures in any lawful manner. In such respect the provisions of this subchapter are cumulative.

(b) This subchapter shall create no presumption concerning the intention of an individual who has not executed a declaration to consent to the use or withholding of life-sustaining procedures in the event of a terminal condition.

(Feb. 25, 1982, D.C. Law 4-69, § 10, 28 DCR 5047.)

Prior Codifications. — 1981 Ed., § 6-2429.
Legislative history of Law 4-69. — For legislative history of D.C. Law 4-69, see Historical and Statutory Notes following § 7-621.

§ 7-630. Effect of subchapter.

Nothing in this subchapter shall be construed to condone, authorize, or

approve mercy-killing or to permit any affirmative or deliberate act or omission to end a human life other than to permit the natural process of dying as provided in this subchapter.

(Feb. 25, 1982, D.C. Law 4-69, § 11, 28 DCR 5047.)

Prior Codifications. — 1981 Ed., § 6-2430.

Temporary Addition of Section. — For temporary (225 day) additions, see §§ 2 to 4 of Mandatory Autopsy for Deceased Wards of the District of Columbia and Mandatory Unusual Incident Report Temporary Act of 2001 (D.C. Law 14-70, February 27, 2002, law notification 49 DCR 2280).

Emergency legislation. — For temporary (90 day) provisions for mandatory autopsies and unusual incident reports, see § 2 of Mandatory Autopsy for Deceased Wards of the District of Columbia and Mandatory Unusual Incident Report Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-25, April 2, 2001, 48 DCR 3320).

For temporary (90 day) provisions for man-

datory autopsies and unusual reports, see § 2 of Mandatory Autopsy for Deceased Wards of the District of Columbia and Mandatory Unusual Incident Report Emergency Amendment Act of 2001 (D.C. Act 14-151, October 23, 2001, 48 DCR 10204).

For temporary (90 day) provisions for mandatory autopsies and unusual incident reports, see §§ 2 to 5 of Mandatory Autopsy for Deceased Wards of the District of Columbia and Mandatory Unusual Incident Report Congressional Review Emergency Act of 2002 (D.C. Act 14-261, January 30, 2002, 49 DCR 1437).

Legislative history of Law 4-69. — For legislative history of D.C. Law 4-69, see Historical and Statutory Notes following § 7-621.

CHAPTER 6A. NON-RESUSCITATION PROCEDURES FOR EMERGENCY
MEDICAL SERVICES.

Sec.

- 7-651.01. Definitions.
- 7-651.02. Execution and issuance of comfort care order.
- 7-651.03. Form of comfort care order.
- 7-651.04. Comfort care bracelet or necklace.
- 7-651.05. Revocation of a comfort care order.
- 7-651.06. Decision to withhold resuscitation.
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Sec.

- 7-651.09. Reciprocity.
- 7-651.10. Training and education.
- 7-651.11. Liability.
- 7-651.12. Prohibitions and penalties.
- 7-651.13. Exclusion of suicide; insurance.
- 7-651.14. Fee.
- 7-651.15. Rules.
- 7-651.16. Applicability.
- 7-651.17. [Repealed].

§ 7-651.01. Definitions.

For the purposes of this chapter, the term:

(1) "Advanced airway management" means direct ventilation of the lungs through an endotracheal tube by mouth or stoma.

(2) "Advanced life support" means advanced airway management, including endotracheal intubation; defibrillation; administration of cardiac resuscitation medications; and medical procedures related to the specific medical procedures set forth in this paragraph as determined by the person's attending physician or as set forth in medical protocols.

(3) "Artificial ventilation" means forcing oxygen in the lungs when a person has stopped breathing or has inadequate breathing.

(4) "Attending physician" means a physician who has primary responsibility for the medical care of a person who executes a comfort care order in accordance with this chapter.

(5) "Authorized decision-maker" means a person authorized to make a health care decision on behalf of another person in accordance with §§ 21-2205 and 21-2210.

(6) "Cardiac arrest" means the cessation of a functional heartbeat and pulse.

(7) "Cardiopulmonary resuscitation" means cardiac compression or artificial ventilation.

(8) "Comfort care order" or "Order" means a document, on a form approved by the Mayor and executed in accordance with the provisions of this chapter, which authorizes emergency medical services personnel to withhold cardiopulmonary resuscitation from a person if the person experiences cardiac or respiratory arrest as the result of a specified medical or terminal condition and to administer comfort care in accordance with § 7-651.08.

(9) "District" means the District of Columbia.

(10) "Emergency medical services" or "EMS" means medical services provided in response to a person's need for immediate medical care, which are intended to prevent loss of life, the aggravation of a physiological illness or injury, or the aggravation of a psychological illness, including any services recognized in the District as first response, basic life support, advanced life support, specialized life support, patient transportation, medical control, or rescue.

(11) “Emergency medical services agency” or “EMS agency” means any person, firm, corporation, or organization authorized by District law to provide emergency medical care or medical transport to a person who is ill, injured, or incapacitated by disease or a medical condition.

(12) “Emergency medical services personnel” or “EMS personnel” means a physician who is licensed to practice medicine in the District, a registered nurse who is licensed to practice professional nursing in the District, or an emergency medical technician/basic (“EMT/B”), emergency medical technician/paramedic (“EMT/P”), or emergency medical technician/intermediate paramedic (“EMT/IP”) who is certified to provide emergency medical services in the District.

(13) “Minor” means a person who is less than 18 years of age.

(14) “Patient” means a person who has executed a comfort care order in accordance with this chapter.

(15) “Respiratory arrest” means the cessation of functional breathing.

(16) “Resuscitate” means the administration of cardiopulmonary resuscitation or advanced life support, as appropriate.

(17) “Surrogate” means the natural parent, adoptive parent, or legal guardian of a minor who executes a comfort care order on behalf of the minor.

(18) “Terminal condition” means an incurable medical condition caused by an injury, illness, or disease, which, regardless of the application of life-sustaining procedures, would, within reasonable medical judgement, produce death, and where the application of life-sustaining procedures serve only to postpone the moment of death of the person who has the incurable medical condition.

(Apr. 3, 2001, D.C. Law 13-224, § 2, 48 DCR 27.)

Legislative history of Law 13-224. — Law 13-224, the “Emergency Medical Services Non-Resuscitation Procedures Act of 2000”, was introduced in Council and assigned Bill No. 13-448, which was referred to the Committee on the Judiciary. The Bill was adopted on first

and second readings on October 3, 2000, and November 8, 2000, respectively. Signed by the Mayor on November 29, 2000, it was assigned Act No. 13-486 and transmitted to both Houses of Congress for its review. D.C. Law 13-224 became effective on April 3, 2001.

§ 7-651.02. Execution and issuance of comfort care order.

(a) The following persons may execute a comfort care order to communicate the decision that the person who is the subject of the order shall not be resuscitated if the person experiences cardiac arrest or respiratory arrest as a result of a specified medical or terminal condition:

(1) Any competent person, who is 18 years of age or older, on behalf of the competent person;

(2) An authorized decision-maker on behalf of an incapacitated person; or

(3) A surrogate on behalf of a minor.

(b) A comfort care order may be issued only by the attending physician of a person who is the subject of the Order. The attending physician shall explain to the person who does not wish to be resuscitated and the person’s authorized decision-maker or surrogate, as appropriate, the effect of the Order and the alternatives, including medical treatment and the issuance of another form of

advanced directive. If the person, after reviewing the alternatives, wishes to execute an Order, the attending physician shall:

- (1) Issue the Order and a comfort care bracelet or necklace;
 - (2) Place the bracelet or necklace on the person;
 - (3) Explain to the person, authorized decision-maker, or surrogate how the Order may be revoked; and
 - (4) Submit a copy of the comfort care order to the Mayor.
- (c) The Mayor shall keep confidential any records containing patient social security numbers.

(Apr. 3, 2001, D.C. Law 13-224, § 3, 48 DCR 27.)

Legislative history of Law 13-224. — For D.C. Law 13-224, see notes following § 7-651.01.

§ 7-651.03. Form of comfort care order.

(a) The comfort care order shall:

- (1) Be a distinctive form approved by the Mayor, sequentially numbered, and printed on security paper;
- (2) Include a statement describing the specific medical or terminal condition of the patient and the circumstances under which the patient shall not be resuscitated;
- (3) Include the name of the patient and an identification number;
- (4) Include the signature of the patient, if the patient is not an incapacitated person;
- (5) Be signed and dated by the attending physician of the patient;
- (6) Include the attending physician's license number and telephone number; and
- (7) If the patient has an authorized decision-maker or surrogate, include the name, signature and social security number of the authorized decision-maker or surrogate.

(b) The Mayor shall provide comfort care order forms and instructions to physicians and hospitals through the Department of Health and at distribution points that the Mayor determines to be necessary to implement this chapter.

(Apr. 3, 2001, D.C. Law 13-224, § 4, 48 DCR 27.)

Legislative history of Law 13-224. — For D.C. Law 13-224, see notes following § 7-651.01.

§ 7-651.04. Comfort care bracelet or necklace.

(a) EMS personnel shall recognize only a comfort care bracelet or necklace for purposes of withholding cardiopulmonary resuscitation or advanced life support.

(b) The Mayor shall approve the design for a comfort care bracelet and

necklace. The bracelet and necklace shall be easily identifiable and designed so that the following information is visible:

- (1) The patient's name and an identification number;
- (2) The name and telephone number of the patient's attending physician;
- (3) The comfort care order number; and
- (4) Any other information that the Mayor determines, by rule, to be necessary to implement this chapter.

(c) The comfort care bracelet and necklace shall be metal, except that the Mayor may issue a plastic temporary bracelet and necklace for use by a patient until the metal bracelet or necklace is received.

(Apr. 3, 2001, D.C. Law 13-224, § 5, 48 DCR 27.)

Legislative history of Law 13-224. — For D.C. Law 13-224, see notes following § 7-651.01.

Legislative history of Law 13-224. — For D.C. Law 13-224, see notes following § 7-651.01.

§ 7-651.05. Revocation of a comfort care order.

A patient, or the patient's authorized decision-maker or surrogate, may revoke a comfort care order at any time by:

- (1) Removing, cutting, destroying, defacing, or discarding the comfort care bracelet;
- (2) Directing another person to remove, cut, destroy, deface, or discard the bracelet in the presence of the patient, authorized decision-maker, or surrogate; or
- (3) Communicating directly to EMS personnel the patient's, authorized decision-maker's, or surrogate's intent to revoke the comfort care order.

(Apr. 3, 2001, D.C. Law 13-224, § 6, 48 DCR 27.)

Legislative history of Law 13-224. — For D.C. Law 13-224, see notes following § 7-651.01.

§ 7-651.06. Decision to withhold resuscitation.

(a) If EMS personnel encounter a person who is in cardiac or respiratory arrest and the person is wearing a comfort care bracelet or necklace, EMS personnel shall determine whether the comfort care bracelet or necklace is intact or has been defaced. If the comfort care bracelet or necklace is intact and has not been defaced, EMS personnel shall not resuscitate.

(b) If EMS personnel encounter a person who is wearing an intact comfort care bracelet or necklace that has not been defaced and who is experiencing significant respiratory distress, which would require artificial ventilation to forestall a cardiac or respiratory arrest, EMS personnel shall withhold artificial ventilation, including advanced airway management.

(c) If resuscitation has been initiated, resuscitation shall be withdrawn if EMS personnel determine that the criteria in subsection (a) of this section is satisfied.

(d) If EMS personnel do not resuscitate on the basis of an intact comfort care

bracelet or necklace that has not been defaced, EMS personnel shall record the do-not-resuscitate response in the run report and report the do-not-resuscitate response to the Mayor within 5 business days of the incident.

(Apr. 3, 2001, D.C. Law 13-224, § 7, 48 DCR 27.)

Legislative history of Law 13-224. — For D.C. Law 13-224, see notes following § 7-651.01.

§ 7-651.07. Decision to resuscitate.

(a) If EMS personnel encounter a patient who is in cardiac or respiratory arrest and the patient is wearing a comfort care bracelet or necklace that is intact or has not been defaced, but the patient, or the patient's authorized decision-maker or surrogate, orally requests that EMS personnel resuscitate the patient, EMS personnel shall resuscitate and the patient, or the patient's authorized decision-maker or surrogate, shall remove the comfort care bracelet or necklace from the patient to ensure that the revocation of the comfort care order is honored at the hospital.

(b) If EMS personnel encounter a patient who is in cardiac or respiratory arrest and the patient is wearing a comfort care bracelet or necklace that is not intact or has been defaced, EMS personnel shall resuscitate. If there is a reason to question whether the comfort care bracelet or necklace is intact or has been defaced, EMS personnel shall resuscitate.

(Apr. 3, 2001, D.C. Law 13-224, § 8, 48 DCR 27.)

Legislative history of Law 13-224. — For D.C. Law 13-224, see notes following § 7-651.01.

§ 7-651.08. Comfort care; alleviation of pain.

EMS personnel may provide the following interventions to a patient who is wearing an intact comfort care bracelet or necklace that has not been defaced to comfort the patient or alleviate pain:

- (1) Clear the airway, excluding artificial ventilation, esophageal obturator airway, or advanced airway management;
- (2) Administer suction;
- (3) Provide oxygen, excluding artificial ventilation, esophageal obturator airway, or advanced airway management;
- (4) Provide pain medication;
- (5) Control bleeding; or
- (6) Make comfort adjustments.

(Apr. 3, 2001, D.C. Law 13-224, § 9, 48 DCR 27.)

Legislative history of Law 13-224. — For D.C. Law 13-224, see notes following § 7-651.01.

§ 7-651.09. Reciprocity.

EMS personnel shall recognize a comfort care bracelet, necklace, or similar identifier issued by Maryland and Virginia as if issued in accordance with this chapter and shall act on the identifier in accordance with this chapter.

(Apr. 3, 2001, D.C. Law 13-224, § 10, 48 DCR 27.)

Legislative history of Law 13-224. — For D.C. Law 13-224, see notes following § 7-651.01.

§ 7-651.10. Training and education.

The Mayor shall provide training for EMS personnel on the implementation of this chapter and initiate and participate in programs designed to educate the public with respect to this chapter.

(Apr. 3, 2001, D.C. Law 13-224, § 11, 48 DCR 27.)

Legislative history of Law 13-224. — For D.C. Law 13-224, see notes following § 7-651.01.

§ 7-651.11. Liability.

(a) No licensed health care professional, EMS personnel, health care facility, government entity, or government employee shall be subject to criminal or civil liability, or be found to have committed an unprofessional act because the person, in good faith, resuscitates, withholds or withdraws resuscitation, or participates in resuscitating or withholding or withdrawing resuscitation in accordance with this chapter. This subsection shall be liberally construed to protect a person who implements this chapter in good faith from liability.

(b)(1) Any physician or nurse who is licensed in the District and who, for religious or moral reasons, is unwilling or unable to comply with a comfort care order for a patient under the physician's or nurse's care shall immediately notify their employer, in writing, of their unwillingness or inability to comply with the Order and shall transfer a patient under the care of the physician or nurse to a qualified physician or nurse who is willing or able to honor the comfort care order. A transfer pursuant to this section shall not constitute abandonment of the patient or unprofessional conduct.

(2) If, because of emergency medical circumstances, a physician or nurse who is unwilling or unable to comply with a comfort care order for a patient under the physician's or nurse's care has insufficient time to effectuate a transfer in accordance with this subsection, the physician or nurse shall not be found to have committed an unprofessional act or to have violated any provision of this chapter because the physician or nurse resuscitates the patient.

(c)(1) Any EMT/B, EMT/P, or EMT/IP who is certified to provide emergency medical services in the District and who, for religious or moral reasons, is unwilling or unable to comply with a comfort care order shall immediately

notify the EMS agency that employs the EMT/B, EMT/P, or EMT/IP, in writing, of their unwillingness or inability to comply with the Order.

(2) An EMT/B, EMT/P, or EMT/IP who is unwilling or unable to comply with a comfort care order shall not be found to have committed an unprofessional act or to have violated any provision of this chapter because the EMT/B, EMT/P, or EMT/IP resuscitates a patient.

(Apr. 3, 2001, D.C. Law 13-224, § 12, 48 DCR 27.)

Legislative history of Law 13-224. — For D.C. Law 13-224, see notes following § 7-651.01.

§ 7-651.12. Prohibitions and penalties.

Any person who falsifies or forges a comfort care order, willfully conceals or withholds personal knowledge of the revocation of a comfort care order contrary to the wishes of a person who has executed a comfort care order, or places a comfort care bracelet on a person for whom a comfort care order has not been executed in accordance with § 7-651.02(a) and (b), and who, because of the forgery, concealment, withholding, or placement, directly causes resuscitation to be withheld or withdrawn from a person and the death of the person to be hastened shall be subject to prosecution for unlawful homicide pursuant to § 22-2101.

(Apr. 3, 2001, D.C. Law 13-224, § 13, 48 DCR 27.)

Legislative history of Law 13-224. — For D.C. Law 13-224, see notes following § 7-651.01.

§ 7-651.13. Exclusion of suicide; insurance.

(a) Withholding or withdrawing resuscitation from a patient in accordance with this chapter shall not constitute a suicide or a crime of assisting suicide.

(b) The execution or issuance of a comfort care order pursuant to this chapter shall not affect the sale, procurement, or issuance of any life insurance policy, nor be deemed to modify the terms of an existing life insurance policy. No life insurance policy shall be legally impaired or invalidated because resuscitation is withheld from a patient in accordance with this chapter, notwithstanding terms of a life insurance policy to the contrary.

(c) No physician, EMS personnel, health care provider, health facility, health service plan, health maintenance organization, insurer that issues disability insurance, self-insured employee, welfare benefit plan, nonprofit medical insurance corporation, or mutual nonprofit hospital service corporation shall require any person to execute a comfort care order as a condition of being insured for, or receiving, health care services.

(Apr. 3, 2001, D.C. Law 13-224, § 14, 48 DCR 27.)

Legislative history of Law 13-224. — For D.C. Law 13-224, see notes following § 7-651.01.

§ 7-651.14. Fee.

The Mayor may charge a reasonable fee for a comfort care order, comfort care bracelet or necklace, and for processing a comfort care order. The fee shall be established by rule.

(Apr. 3, 2001, D.C. Law 13-224, § 15, 48 DCR 27.)

Legislative history of Law 13-224. — For D.C. Law 13-224, see notes following § 7-651.01.

§ 7-651.15. Rules.

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2 shall issue rules to implement the provisions of this chapter.

(Apr. 3, 2001, D.C. Law 13-224, § 16, 48 DCR 27.)

Legislative history of Law 13-224. — For D.C. Law 13-224, see notes following § 7-651.01.

§ 7-651.16. Applicability.

This chapter shall apply 90 days after April 3, 2001.

(Apr. 3, 2001, D.C. Law 13-224, § 17, 48 DCR 27.)

Legislative history of Law 13-224. — For D.C. Law 13-224, see notes following § 7-651.01.

§ 7-651.17. Appropriations. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-224, § 18, 48 DCR 27; Aug. 16, 2008, D.C. Law 17-219, § 7027, 55 DCR 7598.)

Legislative history of Law 13-224. — For D.C. Law 13-224, see notes following § 7-651.01.

Legislative history of Law 17-219. — Law 17-219, the “Fiscal Year 2009 Budget Support Act of 2008”, was introduced in Council and assigned Bill No. 17-678, which was referred to

the Committee of the Whole. The Bill was adopted on first and second readings on May 13, 2008, and June 3, 2008, respectively. Signed by the Mayor on June 26, 2008, it was assigned Act No. 17-419 and transmitted to both Houses of Congress for its review. D.C. Law 17-219 became effective on August 16, 2008.

CHAPTER 7. LONG-TERM CARE OMBUDSMAN PROGRAM.

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Subchapter I. Definitions.

§ 7-701.01. Definitions.

For the purposes of this chapter, the term:

(1) "Administrator" means the person who is responsible for the day-to-day operation and management of a long-term care facility, including, in the case of a community residence facility, the residence director.

(2) "Court" means the Superior Court of the District of Columbia.

(3) "Department of Consumer and Regulatory Affairs" means the District of Columbia Department of Consumer and Regulatory Affairs established pursuant to Reorganization Plan No. 1 of 1983.

(3A) "Department of Health, Health Regulations and Licensing Administration" means the administrative office established in January 17, 2007 under the Department of Health.

(4) "Department of Human Services" means the District of Columbia Department of Human Services established pursuant to Reorganization Plan No. 2 of 1979 and Reorganization Plan No. 3 of 1986.

(4A) "Department of Mental Health" means the Department of Mental Health established as a separate cabinet-level agency pursuant to § 7-1131.03.

(5) "Designee" means a person who:

(A) Has received a minimum of 15 hours of certified training in accordance with § 7-702.04(a)(15);

(B) Is an employee or volunteer of the program established pursuant to § 7-702.01 or has written authorization to act on behalf of the ombudsman pursuant to § 7-702.04(a)(3).

(6) "Director" means the Executive Director of the District of Columbia Office on Aging established by § 7-503.02.

(6A) "Home care agency" shall have the same meaning as provided in § 44-501(a)(7).

(7) “Long-term care facility” means:

(A) A “community residence facility” as defined in § 44-501(a)(4);

(B) A “nursing home” as defined in § 44-501(a)(3); or

(C) An “assisted living residence” as defined in § 44-101.01(4).

(7A) “Long-term care services” means services received at a long-term care facility and services provided to residents in the community who need a nursing home level of care and receive home health care through the Medicaid Elderly and Physically Disabled Waiver.

(8) “Ombudsman” means the District of Columbia Long-Term Care Ombudsman established by § 7-702.02(a) and designated under § 307(a)(12) of the Older Americans Act of 1965; (42 U.S.C. § 3027(a)(12)), to perform the mandated functions of the Long-Term Care Ombudsman Program.

(9) “Office on Aging” means the District of Columbia Office on Aging established by § 7-503.01.

(10) “Person” means an individual, an agent, a corporation, a partnership, or any other organizational entity.

(11) “Program” means the District of Columbia Long-Term Care Ombudsman Program established by § 7-702.01.

(12) “Record” means:

(A) Medical, social, personal, or financial information maintained by a health-care facility covered by the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, or by a District of Columbia (“District”) government agency that has responsibility for the care and maintenance of a resident in a long-term care facility; and

(B) An administrative record, cost or incident report, or a report of a civil infraction, inspection, or deficiency maintained by a long-term care facility or a District government agency.

(13) “Resident” means a resident of a long-term care facility or an individual receiving long-term care services from a home care agency through the Medicaid Elderly and Physically Disabled Waiver.

(14) “Representative of a resident” means:

(A) A person who is knowledgeable about the circumstances of a resident and has been designated by that resident to represent him or her; or

(B) A person, other than a facility, who has been appointed by a court to administer the financial or personal affairs of a resident or to protect and advocate for the rights of a resident; or

(C) The ombudsman or his or her designee, if no person has been designated or appointed in accordance with subparagraph (A) or (B) of this paragraph.

(Mar. 16, 1989, D.C. Law 7-218, § 101, 36 DCR 534; Mar. 12, 2011, D.C. Law 18-321, § 2(a), 57 DCR 12438; Mar. 14, 2012, D.C. Law 19-111, § 2(a), 59 DCR 455.)

Prior Codifications. — 1981 Ed., § 6-3501.

Effect of amendments. — D.C. Law 18-321 added pars. (3A) and (4A); in par. (5)(B), sub-

stituted “Is an employee or volunteer” for “Is an employee”; and, in par. (7), deleted “or” from the end of subpar. (A), substituted “; or” for a period

at the end of subpar. (B), and added subpar. (C).
D.C. Law 19-111 added pars. (6A) and (7A); and rewrote par. (13), which formerly read:

“(13) ‘Resident’ means a resident of a long-term care facility.”

Legislative history of Law 7-218. — Law 7-218, the “District of Columbia Long-Term Care Ombudsman Program Act of 1988,” was introduced in Council and assigned Bill No. 7-334, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-293 and transmitted to both Houses of Congress for its review.

Legislative history of Law 18-321. — Law 18-321, the “Long-Term Care Ombudsman Program Amendment Act of 2010”, was introduced in Council and assigned Bill No. 18-1003, which was referred to the Committee on Aging and Community Affairs. The Bill was adopted on

first and second readings on November 9, 2010, and November 23, 2010, respectively. Signed by the Mayor on December 9, 2010, it was assigned Act No. 18-642 and transmitted to both Houses of Congress for its review. D.C. Law 18-321 became effective on March 12, 2011.

Legislative history of Law 19-111. — Law 19-111, the “Long-Term Care Ombudsman Program Amendment Act of 2012”, was introduced in Council and assigned Bill No. 19-213, which was referred to the Committee on Aging and Community Affairs. The Bill was adopted on first and second readings on December 6, 2011, and January 4, 2012, respectively. Signed by the Mayor on January 20, 2012, it was assigned Act No. 19-281 and transmitted to both Houses of Congress for its review. D.C. Law 19-111 became effective on March 14, 2012.

References in text. — The “Health-Care and Community Residence Facility, Hospice, and Home Care Licensure Act of 1983”, referred to in paragraph (12), is D.C. Law 5-48.

Subchapter II. Establishment of a Long-Term Care Ombudsman Program.

§ 7-702.01. Purpose and functions.

There is established a Long-Term Care Ombudsman Program for the District of Columbia within the Office on Aging. The program shall provide a comprehensive continuum of advocacy services for older persons and other persons who are residents in the District, which shall include:

- (1) Advocating for the rights of older persons and other persons who are residents;
- (2) Investigating and resolving any complaint made by or on behalf of an older person or other person who is a resident; and
- (3) Monitoring the quality of care, services provided, and quality of life experienced by older persons and residents to ensure that the care and services are in accordance with applicable District and federal laws.

(Mar. 16, 1989, D.C. Law 7-218, § 201, 36 DCR 534.)

Section references. — This section is referred to in § 7-701.01.

Prior Codifications. — 1981 Ed., § 6-3511.

Legislative history of Law 7-218. — For

legislative history of D.C. Law 7-218, see Historical and Statutory Notes following § 7-701.01.

§ 7-702.02. Long-Term Care Ombudsman; appointment; vacancy.

(a) The program shall be administered by a full-time ombudsman and shall be under the Director of the Office on Aging (“Director”) or his or her designee. The Director shall appoint the ombudsman for a term of 2 years and approve of the designee of the ombudsman. The ombudsman shall be a resident of the District.

(b) The Director may contract with a nonprofit provider, other than the District government, to operate the program. The provider shall have experience advocating for the rights of older persons and residents. The ombudsman shall be an employee of the nonprofit provider.

(c) The Director shall ensure that the following are provided to the ombudsman or his or her designee to implement the provisions of this chapter:

(1) Legal counsel for advice and consultation;

(2) Legal representation, if legal action is taken to implement the provisions of this chapter; and

(3) Clerical and administrative support staff and materials.

(d) The primary responsibility of the ombudsman or his or her designee shall be the investigation and resolution of any complaint made by or on behalf of a resident.

(Mar. 16, 1989, D.C. Law 7-218, § 202, 36 DCR 534.)

Section references. — This section is referred to in § 7-701.01.

Prior Codifications. — 1981 Ed., § 6-3512.

Legislative history of Law 7-218. — For

legislative history of D.C. Law 7-218, see Historical and Statutory Notes following § 7-701.01.

§ 7-702.03. Long-Term Care Ombudsman; appointment; vacancy — Training and experience.

(a) The ombudsman shall have training and experience in the following areas:

(1) Gerontology, long-term care, health care, or relevant social services program;

(2) The legal system;

(3) Dispute resolution techniques, including investigation, mediation, or negotiation; and

(4) Long-term care advocacy.

(b) No person who has been employed by a long-term care facility or a corporation that directly or indirectly owned or operated a long-term care facility within the past 2 years shall be an ombudsman.

(c) Neither the ombudsman nor any member of his or her immediate family shall have any pecuniary interest in a long-term care facility.

(Mar. 16, 1989, D.C. Law 7-218, § 203, 36 DCR 534.)

Prior Codifications. — 1981 Ed., § 6-3513.

Legislative history of Law 7-218. — For legislative history of D.C. Law 7-218, see His-

torical and Statutory Notes following § 7-701.01.

§ 7-702.04. Long-Term Care Ombudsman; appointment; vacancy — Powers and duties.

(a) The ombudsman shall:

(1) Receive, investigate, and resolve complaints or concerns made by or on behalf of residents;

(2) Promote the well-being and quality of life of each resident;

(3) Encourage the development and the expansion of the activities of the program in all wards of the District, sufficient to serve the residents in those wards;

(4) Submit to the Office on Aging for submission to the Council and the Mayor annual reports that document complaints received and resolved and recommend policy, regulatory, or legislative changes;

(5) Enter into, on behalf of the Office on Aging and with the approval of the Director, written agreements of understanding, cooperation, and collaboration with any District government agency that provides funding, oversight, or inspection of, or operates a long-term care facility;

(6) Establish and implement program policies and procedures to elicit, receive, investigate, verify, refer, and resolve residents' complaints;

(7) Develop an on-going program for publicizing the program;

(8) Identify, document, and address solutions to problems affecting residents;

(9) Serve as the legal representative for residents, pursuant to §§ 44-1003.02(e), 44-1003.03(a)(1), and 44-1003.07(a) and (b);

(10) Repealed.

(11) Establish a uniform system to record data on complaints and conditions relating to long-term care services;

(12) Monitor the development and implementation of district and federal laws, rules, regulations, and policies that affect residents;

(13) Make specific recommendations, through the Office on Aging, to the operator or agent of the operator of any long-term care facility, whenever the ombudsman believes that conditions exist that adversely affect residents' health, safety, welfare, or rights;

(14) Report to the appropriate enforcement agency any act of an operator of a long-term care facility or home care agency that the ombudsman believes to be a violation of an applicable federal or District law, regulation, or rule;

(15) Establish and conduct a training program for persons employed by or associated with the program, which shall include training in the following areas:

(A) The review of medical records;

(B) Regulatory requirements for long-term care facilities;

(C) Confidentiality of records;

(D) Techniques of complaint investigation;

(E) The effects of institutionalization; and

(F) The special needs of the elderly;

(16) Assist in the formation, development, and use by residents, their families, and friends of forums that permit residents, their families, and friends to discuss and communicate, on a regular and continuing basis, their views on the strengths and weaknesses of the operation of the facility, the quality of care provided, and the quality of life fostered in long-term care facilities;

(17) Establish and maintain procedures to protect the confidentiality of the records of residents and long-term care facilities where access is authorized pursuant to § 7-703.02;

(18) Prohibit any employee, designee, or representative of the program from investigating any complaint or representing the ombudsman, unless that person has received training in accordance with paragraph (15) of this subsection; and

(19) Designate local ombudsman programs to act on behalf of the ombudsman within specific geographical areas.

(b) No person, agency, or long-term care facility shall obstruct the ombudsman or his or her designee from the lawful performance of any duty or the exercise of any power.

(Mar. 16, 1989, D.C. Law 7-218, § 204, 36 DCR 534; Feb. 5, 1994, D.C. Law 10-68, § 18, 40 DCR 6311; Mar. 12, 2011, D.C. Law 18-321, § 2(b), 57 DCR 12438; Mar. 14, 2012, D.C. Law 19-111, § 2(b), 59 DCR 455.)

Section references. — This section is referred to in § 7-701.01.

Prior Codifications. — 1981 Ed., § 6-3514.

Effect of amendments. — D.C. Law 18-321 rewrote subsecs. (a)(1), (4), (6); repealed subsec. (a)(10); in subsec. (a)(11), substituted “Establish a uniform system to record data on complaints and conditions relating to long-term care services;” for “Establish a system for coordinating a uniform District-wide system to record data on complaints and conditions in long-term care facilities;”; and, in subsec. (a)(13), substituted “conditions exist that adversely affect residents’ health, safety, welfare, or rights;” for “conditions which adversely affect the health, safety, welfare, or rights of a resident exist within the long-term care facility;”.

D.C. Law 19-111, in subsec. (a)(1), substituted “Receive, investigate,” for “Investigate;” and, in subsec. (a)(14), substituted “long-term care facility or home care agency” for “long-term care facility”.

Legislative history of Law 7-218. — For legislative history of D.C. Law 7-218, see Historical and Statutory Notes following § 7-701.01.

Legislative history of Law 10-68. — Law 10-68, the “Technical Amendments Act of 1993,” was introduced in Council and assigned Bill No. 10-166, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 29, 1993, and July 13, 1993, respectively. Signed by the Mayor on August 23, 1993, it was assigned Act No. 10-107 and transmitted to both Houses of Congress for its review. D.C. Law 10-68 became effective on February 5, 1994.

Legislative history of Law 18-321. — For history of Law 18-321, see notes under § 7-701.01.

Legislative history of Law 19-111. — For history of Law 19-111, see notes under § 7-701.01.

§ 7-702.05. Complaint investigation.

(a) The ombudsman and his or her designee shall have access to any record that is necessary to carry out his or her responsibilities under this chapter.

(b) The ombudsman or his or her designee may initiate an investigation of a long-term care facility independent of the receipt of a specific complaint.

(Mar. 16, 1989, D.C. Law 7-218, § 205, 36 DCR 534.)

Prior Codifications. — 1981 Ed., § 6-3515.

Legislative history of Law 7-218. — For legislative history of D.C. Law 7-218, see His-

torical and Statutory Notes following § 7-701.01.

§ 7-702.06. Confidentiality of records and identities of residents.

(a) The program shall protect the confidentiality of the records (electronic or hard copy) of the residents and employees.

(b) No information or records (electronic or hard copy) maintained by the program shall be disclosed to the public.

(c) Except as provided in subsection (d) of this section, the program shall not disclose the identity of any complainant, resident involved in a complaint, witness, or representative of a resident, unless the complainant, resident, or representative of a resident authorizes the disclosure.

(d) A court may order the disclosure of information made confidential under this chapter if it determines that the disclosure is necessary to enforce this chapter.

(e) A communication between a resident and a person who has access under § 7-703.01 shall be confidential, unless the resident authorizes the release of the communication or unless disclosure is authorized under § 7-702.04(a)(1) or subsection (d) of this section.

(Mar. 16, 1989, D.C. Law 7-218, § 206, 36 DCR 534; Mar. 12, 2011, D.C. Law 18-321, § 2(c), 57 DCR 12438.)

Prior Codifications. — 1981 Ed., § 6-3516.

Effect of amendments. — D.C. Law 18-321, in subsecs. (a) and (b), substituted “records (electronic or hard copy)” for “records”; in subsec. (c), substituted “Except as provided in subsection (d) of this section, the program” for “the program”; and added subsecs. (d) and (e).

Legislative history of Law 7-218. — For legislative history of D.C. Law 7-218, see Historical and Statutory Notes following § 7-701.01.

Legislative history of Law 18-321. — For history of Law 18-321, see notes under § 7-701.01.

§ 7-702.07. Immunity from liability.

(a) No employee, designee, or representative of the program shall be held liable for the good faith performance of responsibilities under this chapter, except that no immunity shall extend to criminal acts.

(b) Repealed.

(c) No communication made by the ombudsman or his or her designee, if reasonably related to the requirements of his or her responsibilities, shall be subject to civil action.

(d) Repealed.

(Mar. 16, 1989, D.C. Law 7-218, § 207, 36 DCR 534; Mar. 12, 2011, D.C. Law 18-321, § 2(d), 57 DCR 12438.)

Prior Codifications. — 1981 Ed., § 6-3517.

Effect of amendments. — D.C. Law 18-321 repealed subsecs. (b) and (d); and, in subsec. (c), substituted “action” for “action for libel or slander”.

Legislative history of Law 7-218. — For

legislative history of D.C. Law 7-218, see Historical and Statutory Notes following § 7-701.01.

Legislative history of Law 18-321. — For history of Law 18-321, see notes under § 7-701.01.

*Subchapter III. Access for the Long-Term Care
Ombudsman and Designees.*

§ 7-703.01. Access to long-term care facilities.

(a) The operator of a long-term care facility shall permit the ombudsman or his or her designee access to the facility to:

(1) Visit, talk with, or make personal, social, or legal services available to all residents, or investigate complaints;

(2) Inform residents of their rights or entitlements, and corresponding obligations under applicable federal and District law by means of distribution of educational materials or discussion in groups and with individual residents;

(3) Assist residents in asserting their legal rights regarding claims for public assistance, medical assistance, social security benefits, or other matters in which residents are aggrieved; and

(4) Inspect all areas of the facility, except the living area of a resident who protests inspection.

(b) Access under this section shall be permitted to the ombudsman or his or her designee 24 hours a day, 7 days a week.

(c) Upon entering a long-term care facility in accordance with this section, the ombudsman or his or her designee shall promptly advise 1 of the following persons of his or her presence:

(1) The administrator or acting administrator;

(2) The residence director; or

(3) Another available supervisory agent of the facility.

(d) A person who has access under this section shall not enter the living area of a resident without identifying him or herself to the resident and receiving the permission of the resident to enter.

(e) A resident shall have the right to terminate, at any time, any visit by a person or representative of the program who has access under this section.

(f) Repealed.

(g) No resident shall be punished or harassed by the operator of a facility or an agent or employee of the operator of the facility because of efforts of the resident to avail himself or herself of his or her rights pursuant to this chapter.

(h) A written notice, prescribed by the ombudsman, that describes the rights of a resident pursuant to this chapter and the telephone number of the ombudsman shall be posted in a conspicuous place at or near the entrance to the long-term care facility and on each floor of the facility.

(i) The operator of a long-term care facility shall provide each resident a personal written copy of the notice required under subsection (h) of this section. Each new resident shall be provided a written copy of the notice upon admission.

(j) If a resident cannot read the notice required under subsection (h) of this section, the contents of the notice shall be communicated to that resident orally and in writing.

(k) The written notice required under subsection (h) of this section shall be provided in the appropriate language to those residents who do not speak or understand English.

(l) A notation that personal notice, as required by subsection (i) of this section, has been provided shall be entered in the clinical record of each resident.

(m) Nothing in this section shall be construed to restrict any right or privilege of a resident to receive a visitor who is not a representative of a community organization, legal services program, or the program.

(Mar. 16, 1989, D.C. Law 7-218, § 301, 36 DCR 534; Mar. 12, 2011, D.C. Law 18-321, § 2(f), 57 DCR 12438.)

Prior Codifications. — 1981 Ed., § 6-3521.

Effect of amendments. — D.C. Law 18-321, in subsec. (b), substituted “to the ombudsman or his or her designee 24 hours a day, 7 days a week” for “between the hours of 8:00 a.m. and 8:00 p.m. daily, unless the nature of the complaint requires investigation at other times”; and repealed subsec. (f), which had read as follows: “(f) A communication between a resident and a person who has access under

this section shall be confidential, unless the resident authorizes the release of the communication.”

Legislative history of Law 7-218. — For legislative history of D.C. Law 7-218, see Historical and Statutory Notes following § 7-701.01.

Legislative history of Law 18-321. — For history of Law 18-321, see notes under § 7-701.01.

§ 7-703.02. Access to records.

(a) Each District agency shall provide cooperation, assistance, data, and the access to records necessary to enable the ombudsman to perform his or her duties under this chapter and other applicable federal and District law. This section shall not be construed to supercede the laws or rules governing access to unexpurgated arrest records maintained by the Metropolitan Police Department or interfere with ongoing criminal investigations.

(b) The ombudsman or his or her designee shall have the same access that is provided to the Mayor to review, inspect, or photocopy the records of a resident of a facility covered by § 44-501 et seq., or § 44-1001.01 et seq., to carry out the provisions of this chapter.

(c) The ombudsman or his or her designee may request a subpoena pursuant to § 1-301.21, to obtain access to records covered by this section.

(d) An owner, employee, or agent of a long-term care facility who lawfully discloses information or permits access to records pursuant to this section shall not be liable for civil penalties or criminal prosecution.

(e) An owner, employee, or agent of a long-term care facility or home care agency subject to 45 CFR §§ 164.500 through 164.534 (the Health Insurance Portability and Accountability Act privacy regulation), shall release records to the program as an exempt health oversight agency.

(Mar. 16, 1989, D.C. Law 7-218, § 302, 36 DCR 534; Mar. 12, 2011, D.C. Law 18-321, § 2(g), 57 DCR 12438; Mar. 14, 2012, D.C. Law 19-111, § 2(c), 59 DCR 455.)

Section references. — This section is referred to in §§ 7-702.04 and 7-704.01.

Prior Codifications. — 1981 Ed., § 6-3522.

Effect of amendments. — D.C. Law 18-321 added subsec. (e).

D.C. Law 19-111, in subsec. (e), substituted

“long-term care facility or home care agency” for “long-term care facility”.

Legislative history of Law 7-218. — For legislative history of D.C. Law 7-218, see Historical and Statutory Notes following § 7-701.01.

Legislative history of Law 18-321. — For history of Law 18-321, see notes under § 7-701.01.

Legislative history of Law 19-111. — For history of Law 19-111, see notes under § 7-701.01.

§ 7-703.03. Visits to the home of a resident.

The Ombudsman may communicate and visit with a resident who receives home care services; provided, that the Ombudsman obtains permission from the resident or a representative of the resident to enter the resident's home.

(Mar. 16, 1989, D.C. Law 7-218, § 303, as added Mar. 14, 2012, D.C. Law 19-111, § 2(d), 59 DCR 455.)

Emergency legislation. — For temporary (90 day) repeal of section 3 of D.C. Law 19-111, see § 7013 of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) repeal of section 3 of D.C. Law 19-111, see § 7013 of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 19-111. — For history of Law 19-111, see notes under § 7-701.01.

Editor's notes. — Section 3 of D.C. Law 19-111 provided: "Sec. 3. Applicability. This act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan."

Subchapter IV. Enforcement; Penalties; Judicial Review.

§ 7-704.01. Enforcement; penalties.

(a) Civil fines, penalties, or related costs may be imposed against any long-term care facility, owner, executive officer, administrator, employee, or agent, for the violation of any provision of this chapter or any rule issued pursuant to this chapter.

(b) Procedures for adjudication and enforcement and applicable civil fines, penalties, or costs shall be those prescribed for a Class 2 civil infraction, pursuant to Chapter 18 of Title 2.

(c) If the ombudsman or his or her designee knowingly violates § 7-703.06 by releasing a confidential document, record, or other information obtained pursuant to § 7-703.02(b), the ombudsman or his or her designee may be prosecuted for a misdemeanor and, upon conviction, subject to a fine of not more than \$1,500, imprisonment for not more than 30 days, or both.

(d) No person shall take discriminatory, disciplinary, or retaliatory action against an employee of a long-term care facility or agency, resident, or resident representative for filing in good faith a complaint with, or providing information to, the ombudsman or his designees. A person who violates this provision, or who aids, abets, invites, compels, or coerces another to do so, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine not to exceed \$1,000, imprisonment not to exceed 180 days, or both. This subsection shall not infringe upon the rights of an employer to supervise, discipline, or to terminate an employee for other reasons.

(e) A person who knowingly denies access to the ombudsman or his or her designee in violation of subchapter III of this chapter, or aids, abets, invites, compels, or coerces another to do so, shall be guilty of a misdemeanor and,

upon conviction, shall be subject to a fine not to exceed \$1,000, imprisonment not to exceed 180 days, or both.

(Mar. 16, 1989, D.C. Law 7-218, § 401, 36 DCR 534; Mar. 12, 2011, D.C. Law 18-321, § 2(h), 57 DCR 12438.)

Prior Codifications. — 1981 Ed., § 6-3531.
Effect of amendments. — D.C. Law 18-321 added subsecs. (d) and (e).

Legislative history of Law 7-218. — For legislative history of D.C. Law 7-218, see His-

torical and Statutory Notes following § 7-701.01.

Legislative history of Law 18-321. — For history of Law 18-321, see notes under § 7-701.01.

Subchapter V. Private Rights of Action.

§ 7-705.01. Injunctive relief.

A resident, a representative of a resident, the ombudsman, or the Attorney General may bring an action in court for a temporary restraining order, preliminary injunction, or permanent injunction to enjoin a long-term care facility from violating a provision of subchapter II or III of this chapter or any rule issued by the Mayor pursuant to this chapter.

(Mar. 16, 1989, D.C. Law 7-218, § 501, 36 DCR 534; Mar. 12, 2011, D.C. Law 18-321, § 2(i), 57 DCR 12438.)

Section references. — This section is referred to in § 7-705.03.

Prior Codifications. — 1981 Ed., § 6-3541.

Effect of amendments. — D.C. Law 18-321 substituted “Attorney General” for “Corporation Counsel”.

Legislative history of Law 7-218. — For

legislative history of D.C. Law 7-218, see Historical and Statutory Notes following § 7-701.01.

Legislative history of Law 18-321. — For history of Law 18-321, see notes under § 7-701.01.

§ 7-705.02. Civil action for damages.

(a) A resident, a representative of a resident, or the ombudsman, on behalf of a resident, may bring an action in court to recover actual and punitive damages for an injury that results from a violation of subchapter II or III of this chapter, or any rule issued by the Mayor pursuant to this chapter. Upon proof of a violation, the resident shall be awarded 3 times the actual damages or \$1000, whichever is greater, and may be awarded punitive damages not to exceed \$10,000.

(b) The first \$7,000 of a damage award recovered by a resident in an action brought under this section shall be excluded from consideration when determining the eligibility of the resident for Medicaid, the amount of assistance the resident is entitled to under Medicaid, or the assets of the resident that the District may subject to a lien, set-off, or other legal process for the purpose of satisfying indebtedness created by the receipt of Medicaid or other public assistance payments.

(Mar. 16, 1989, D.C. Law 7-218, § 502, 36 DCR 534; Mar. 12, 2011, D.C. Law 18-321, § 2(j), 57 DCR 12438.)

Section references. — This section is referred to in § 7-705.03.

Prior Codifications. — 1981 Ed., § 6-3542.

Effect of amendments. — D.C. Law 18-321, in subsec. (a), substituted “\$1000, whichever is greater, and may be awarded punitive damages not to exceed \$10,000” for \$100, whichever is greater, and may be awarded punitive damages of up to \$5,000”; and, in subsec. (b), substituted “\$7,000” for “\$3,000”.

Legislative history of Law 7-218. — For legislative history of D.C. Law 7-218, see Historical and Statutory Notes following § 7-701.01.

Legislative history of Law 18-321. — For history of Law 18-321, see notes under § 7-701.01.

§ 7-705.03. Court costs and attorney’s fees.

The court shall award costs and reasonable attorney’s fees to a resident who prevails in an action brought under § 7-705.01 or § 7-705.02.

(Mar. 16, 1989, D.C. Law 7-218, § 503, 36 DCR 534.)

Prior Codifications. — 1981 Ed., § 6-3543.

Legislative history of Law 7-218. — For legislative history of D.C. Law 7-218, see His-

torical and Statutory Notes following § 7-701.01.

Subchapter VI. Miscellaneous.

§ 7-706.01. Rules.

Within 90 days of March 16, 1989, the Mayor shall, pursuant to subchapter I of Chapter 5 of Title 2, issue proposed rules to implement the provisions of this subchapter. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(Mar. 16, 1989, D.C. Law 7-218, § 601, 36 DCR 534.)

Prior Codifications. — 1981 Ed., § 6-3551.

Legislative history of Law 7-218. — For legislative history of D.C. Law 7-218, see Historical and Statutory Notes following § 7-701.01.

Delegation of Authority. — Delegation of authority under D.C. Law 7-218, the “District of Columbia Long-Term Care Ombudsman Program Act of 1988”, see Mayor’s Order 89-86, April 28, 1989.

CHAPTER 7A. FUNCTIONS OF THE DEPARTMENT OF HEALTH.

Subchapter I. General Powers, Fees, and Funds

- Sec.
7-731. Exclusive agency powers.
7-732. [Repealed].
7-733. Health Occupations Regulation Fund.
7-733.01. Deposit of fees.
7-733.02. Board of Pharmacy Fund.
7-734. Public Health Laboratory fees.
7-735, 7-736. [Repealed].
7-736.01. Grant authority.

Sec.
7-737. Rules.

Subchapter II. Inspections, Penalties, Waiver, and Employee Rights

- 7-741. Definitions.
7-742. Smoking prohibitions; inspections.
7-743. Exemptions.
7-744. Penalties.
7-745. Economic hardship waiver.
7-746. Employee rights and protections.
7-747. Rulemaking.

Subchapter I. General Powers, Fees, and Funds.

§ 7-731. Exclusive agency powers.

(a) Notwithstanding the licensing powers and responsibilities given to other District of Columbia agencies and officials in subchapters I-A and I-B of Chapter 28 of Title 47 of the District of Columbia Official Code, the Department of Health, as established by Reorganization Plan No. 4 of 1996, effective July 17, 1996 (part A of subchapter XIV of Chapter 15 of Title 1), shall be the exclusive agency to:

- (1) Regulate allied health care professionals and social service professionals;
- (2) Regulate occupational and professional conduct and standards for health care and social service professionals, including investigating, licensing, and enforcing applicable laws and regulations;
- (3) Regulate actions that affect the physical environment and ensure compliance with applicable federal and District laws and rules that govern the uses and practices that affect the physical environment, including air resources management, water resources management, stormwater management, soil resources management, hazardous waste, pesticides, lead poison program implementation, asbestos program management, underground storage tank regulation, aquatic and wildlife resources management, medical waste management, low-level radioactive waste control, and toxic chemical control;
- (4) Regulate health care facilities and social service facilities;
- (5) Regulate food service establishments, including, but not limited to, retailers and wholesalers of food and food products, grocery stores, restaurants, food vendors, dairies, patent medicine outlets, ice cream manufacturers, candy manufacturers, bottling establishments, wholesale and retail seafood dealers, delicatessens, and bakeries;
- (6) Regulate pharmacies and pharmacy personnel;
- (7) Determine which drugs and other substances shall be classified as controlled substances, and identify persons and facilities that handle, manage, distribute, dispense, and conduct research with controlled substances;
- (8) Regulate radiological and medical devices;

(9) Regulate the manufacture, distribution, and dispensing of controlled substances;

(10) Regulate the operation of barber shops and beauty salons;

(11) Regulate swimming pools;

(12) Regulate massage and health spa establishments;

(13) Regulate animal disease control and rodent control; and

(14) Perform any other functions expressly described in Reorganization Plan No. 4 of 1996, as construed in light of all documents formally made a part of Reorganization Plan No. 4 of 1996 pursuant to § 1-315.05.

(a-1)(1) The Department of Health shall conduct a minimum of 3 inspections per year of the environmental conditions at the Central Detention Facility. For the purposes of this subsection, the term “environmental conditions” shall include temperature control, ventilation, and sanitation.

(2) The Department of Health shall submit the report of each inspection conducted pursuant to paragraph (1) of this subsection to the Council and the Mayor within 30 days of the inspection.

(b) For the purpose of this section, the term “regulate” shall include all licensing, certification, investigation, inspection, permitting, registration, and enforcement functions, including the issuance of civil infractions, except that the Department of Consumer and Regulatory Affairs shall continue to issue licenses for businesses engaged in functions as set forth in subsection (a)(3), (a)(5), (a)(10), (a)(11), and (a)(12) of this section.

(c) The Mayor shall establish fees to implement this section. All fines and fees collected pursuant to this section shall be deposited as nonlapsing funds in the Department of Health Regulatory Enforcement Fund to the credit of the administration within the Department of Health responsible for collecting the fees to support the activities of those programs, except that fines and fees collected pursuant to Chapter 21 of Title 8 shall be deposited in the Rodent Control Fund. After September 30, 2002, fines and fees generated through rodent control activities shall be deposited in the Department of Health Regulatory Enforcement Fund.

(d) Notwithstanding any provision in this section or any other District law, the Mayor may regulate the manufacture, cultivation, distribution, dispensing, possession, and administration of medical marijuana as authorized in Chapter 16B of this title [§ 7-1671.01 et seq.].

(Oct. 3, 2001, D.C. Law 14-28, § 4902, 48 DCR 6981; Jan. 30, 2004, D.C. Law 15-62, § 2, 50 DCR 6574; July 27, 2010, D.C. Law 18-210, § 3(b), 57 DCR 4798.)

Effect of amendments. — D.C. Law 15-62 added subsec. (a-1).

D.C. Law 18-210 added subsec. (d).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3 of Central Detention Facility Monitoring Temporary Amendment Act of 2003 (D.C. Law 15-30, October 4, 2003, law notification 50 DCR 9483).

Emergency legislation. — For temporary

(90 day) addition of section, see § 2 of Department of Health Functions Clarification Emergency Act of 2001 (D.C. Act 14-60, June 6, 2001, 48 DCR 5701).

For temporary (90 day) addition of section, see § 4402 of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

For temporary (90 day) amendment of section, see § 3 of Central Detention Facility Mon-

itoring Emergency Amendment Act of 2003 (D.C. Act 15-76, April 16, 2003, 50 DCR 3637).

For temporary (90 day) amendment of section, see § 3 of Central Detention Facility Monitoring Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-132, July 29, 2003, 50 DCR 6847).

For temporary (90 day) amendment of section, see § 2 of Jail Improvement Emergency Amendment Act of 2003 (D.C. Act 15-188, October 24, 2003, 50 DCR 9495).

For temporary (90 day) addition of sections, see §§ 5013, 5015 of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) addition of sections, see §§ 5013, 5015 of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 14-28. — Law 14-28, the “Fiscal Year 2002 Budget Support Act of 2001”, was introduced in Council and assigned Bill No. 14-144, which was referred to the Committee Of the Whole. The Bill was adopted on first and second readings on May 1, 2001, and June 5, 2001, respectively. Signed by the Mayor on June 29, 2001, it was assigned Act No. 14-85 and transmitted to both Houses of Congress for its review. D.C. Law 14-28 became effective on October 3, 2001.

Legislative history of Law 15-62. — Law 15-62, the “District of Columbia Jail Improvement Amendment Act of 2003”, was introduced in Council and assigned Bill No. 15-31, which

was referred to Committee on the Judiciary. The Bill was adopted on first and second readings on June 3, 2003, and July 8, 2003, respectively. Signed by the Mayor on July 29, 2003, it was assigned Act No. 15-112 and transmitted to both Houses of Congress for its review. D.C. Law 15-62 became effective on January 30, 2004.

Legislative history of Law 18-210. — Law 18-210, the “Legalization of Marijuana for Medical Treatment Amendment Act of 2010”, was introduced in Council and assigned Bill No. 18-622, which was referred to the Committee on Health and the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on April 20, 2010, and May 4, 2010, respectively. Signed by the Mayor on May 21, 2010, it was assigned Act No. 18-429 and transmitted to both Houses of Congress for its review. D.C. Law 18-210 became effective on July 27, 2010.

Delegation of Authority. — Delegation of Authority Pursuant to the Department of Health Functions Clarification Act of 2001, see Mayor’s Order 2005-81, May 25, 2005 (52 DCR 5510).

Delegation of Authority Pursuant to the Department of Health Functions Clarification Act of 2001 to Regulate Barber Shops, Beauty Salons, and Massage and Spa Establishments, see Mayor’s Order 2006-10, January 27, 2006 (53 DCR 2711a).

Delegation of authority pursuant to D.C. Law 14-28, the Department of Health Functions Clarification Act of 2001, see Mayor’s Order 2007-63, March 8, 2007 (54 DCR 7789).

§ 7-732. Regulatory Enforcement Fund. [Repealed].

Repealed.

(Oct. 3, 2001, D.C. Law 14-28, § 4903, 48 DCR 6981; Oct. 28, 2003, D.C. Law 15-38, § 3(g), 50 DCR 6913; Nov. 13, 2003, D.C. Law 15-39, § 1602, 50 DCR 5668; Mar. 13, 2004, D.C. Law 15-105, § 45, 51 DCR 881; Sept. 14, 2011, D.C. Law 19-21, § 9079, 58 DCR 6226.)

Emergency legislation. — For temporary (90 day) addition of section, see § 3 of Department of Health Functions Clarification Emergency Act of 2001 (D.C. Act 14-60, June 6, 2001, 48 DCR 5701).

For temporary (90 day) addition of section, see § 4403 of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

For temporary (90 day) amendment of section, see § 1602 of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) amendment of section, see § 3(g) of Streamlining Regulation

Emergency Act of 2003 (D.C. Act 15-145, August 11, 2003, 50 DCR 6896).

For temporary (90 day) amendment of section, see § 1602 of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

Legislative history of Law 14-28. — For Law 14-28, see notes following § 7-219.

Legislative history of Law 15-38. — Law 15-38, the “Streamlining Regulation Act of 2003”, was introduced in Council and assigned Bill No. 15-19, which was referred to Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings

on June 3, 2003, and July 8, 2003, respectively. Signed by the Mayor on August 11, 2003, it was assigned Act No. 15-146 and transmitted to both Houses of Congress for its review. D.C. Law 15-38 became effective on October 28, 2003.

Legislative history of Law 15-39. — Law 15-39, the “Fiscal Year 2004 Budget Support Act of 2003”, was introduced in Council and assigned Bill No. 15-218, which was referred to Committee on Whole. The Bill was adopted on first and second readings on May 6, 2003, and June 3, 2003, respectively. Signed by the Mayor on June 20, 2003, it was assigned Act No. 15-106 and transmitted to both Houses of Congress for its review. D.C. Law 15-39 became effective on November 13, 2003.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 7-136.

Legislative history of Law 19-21. — Law 19-21, the “Fiscal Year 2012 Budget Support Act of 2011”, was introduced in Council and assigned Bill No. 19-203, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 25, 2011, and June 14, 2011, respectively. Signed by the Mayor on July 22, 2011, it was assigned Act No. 19-98 and transmitted to both Houses of Congress for its review. D.C. Law 19-21 became effective on September 14, 2011.

Short title. — Short title of title XVI of Law 15-39: Section 1601 of D.C. Law 15-39 provided that title XVI of the act may be cited as the Department of Health Functions Clarification Amendment Act of 2003.

§ 7-733. Health Occupations Regulation Fund.

(a) There is established as a nonlapsing, revolving fund in the Department of Health the Health Occupations Regulation Fund (“Fund”), to be administered by the Mayor as an agency fund as defined in § 47-373(2)(I), to which all licensing fees, civil fines, and interest relating to the practice of health occupations in the District of Columbia shall be deposited and credited; except, that the Master License Fee collected by the Department of Consumer and Regulatory Affairs for the activities described in § 7-731 shall be deposited into the Master Business License Fund established by § 47-2851.13, to the credit of the Department of Consumer and Regulatory Affairs.

(b) Revenues deposited into the Fund shall not revert to the General Fund at the end of any fiscal year or at any other time, but shall be continually available to the Department of Health for the uses and purposes set forth in subsection (c) of this section, subject to authorization by Congress in an appropriations act.

(c) Subject to the applicable laws relating to the appropriation of District of Columbia funds, monies received by and deposited in the Health Occupations Regulation Fund shall be for the sole use of the boards established pursuant to Chapter 12 of Title 3, and from it shall be paid all salaries and all other expenses necessary in carrying out the duties of the boards. The Mayor shall be responsible for the deposit and expenditure of these monies.

(d) The Mayor shall submit to the Council, as a part of the annual budget, a requested appropriation for expenditures from the Health Occupations Regulation Fund. The Mayor’s budget request shall be based on an estimated projection of the expenditures necessary to perform the administrative and regulatory functions of the boards established pursuant to Chapter 12 of Title 3.

(Oct. 3, 2001, D.C. Law 14-28, § 4904, 48 DCR 6981.)

Emergency legislation. — For temporary (90 day) addition of section, see § 4 of Department of Health Functions Clarification Emer-

gency Act of 2001 (D.C. Act 14-60, June 6, 2001, 48 DCR 5701).

For temporary (90 day) addition of section,

see § 4404 of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

Legislative history of Law 14-28. — For Law 14-28, see notes following § 7-219.

§ 7-733.01. Deposit of fees.

(a) Beginning with fiscal year 2007, the Mayor shall ensure that all fees and fines received from enforcement and regulation of the activities described in § 7-731 shall be deposited in the Regulatory Enforcement Fund as required by § 7-731(c).

(b) Beginning with fiscal year 2007, the Mayor shall ensure that all licensing fees, civil fines, and interest relating to the practice of health occupations in the District shall be deposited in the Health Occupations Regulations Fund as required by § 7-732 [repealed].

(Oct. 3, 2001, D.C. Law 14-28, § 4904a, as added Oct. 20, 2005, D.C. Law 16-33, § 5052, 52 DCR 7503.)

Emergency legislation. — For temporary (90 day) addition, see § 5052 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — Law 16-33, the “Fiscal Year 2006 Budget Support Act of 2005”, was introduced in Council and assigned Bill No. 16-200 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 10, 2005, and June 21, 2005, respectively.

Signed by the Mayor on July 26, 2005, it was assigned Act No. 16-166 and transmitted to both Houses of Congress for its review. D.C. Law 16-33 became effective on October 20, 2005.

Short title. — Short title of subtitle F of title V of Law 16-33: Section 5051 of D.C. Law 16-33 provided that subtitle F of title V of the act may be cited as the Department of Health Functions Clarification Amendment Act of 2005.

§ 7-733.02. Board of Pharmacy Fund.

(a)(1) There is established, as a nonlapsing fund in the Department of Health, the Board of Pharmacy Fund (“Fund”), to be administered by the Mayor as an agency fund, as defined in § 47-373(2)(I), into which all licensing fees, civil fines, and interest earned relating to the practice of pharmaceutical detailing, and any other funds, as directed by law, shall be deposited and used for the administration of the Board of Pharmacy.

(2) For the purposes of this subsection, the term “practice of pharmaceutical detailing” shall have the same meaning as provided in § 3-1201.02(11A).

(b) All funds deposited into the Fund shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available to the Department of Health for the uses and purposes set forth in subsection (a) of this section, subject to authorization by Congress.

(Oct. 3, 2001, D.C. Law 14-28, § 4904b, as added Mar. 26, 2008, D.C. Law 17-131, § 103, 55 DCR 1659.)

Legislative history of Law 17-131. — Law 17-131, the “SafeRx Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-364 which was referred to the Commit-

tee on Health. The Bill was adopted on first and second readings on December 11, 2007, and January 8, 2008, respectively. Signed by the Mayor on February 1, 2008, it was assigned Act

No. 17-282 and transmitted to both Houses of Congress for its review. D.C. Law 17-131 became effective on March 26, 2008.

Delegation of Authority. — Delegation of

Authority pursuant to D.C. Law 17-131, the SafeRX Amendment Act of 2008, see Mayor's Order 2008-83, June 11, 2008 (55 DCR 9360).

§ 7-734. Public Health Laboratory fees.

The Mayor is authorized to establish a schedule of fees for forms and for performing laboratory analysis of biological and environmental samples obtained from humans, animals, or various environmental media for the purpose of identifying environmental contaminants and performing epidemiological surveillance, including for cases of lead poisoning, tuberculosis, rabies, and sexually transmitted diseases. The schedule of fees may account for the provision of bulk services and may distinguish between services provided to individuals and organizations. The schedule of fees may be developed on a sliding scale based on a person's or organization's ability to pay for laboratory analysis, or may be waived in cases of extreme need.

(Oct. 3, 2001, D.C. Law 14-28, § 4905, 48 DCR 6981; Mar. 27, 2003, D.C. Law 14-257, § 2, 50 DCR 244.)

Effect of amendments. — D.C. Law 14-257 rewrote the first sentence which had read: "The Mayor is authorized to establish a schedule of fees for performing laboratory analysis of biological and environmental samples obtained from humans, animals, or various environmental media for the purpose of identifying environmental contaminants and performing epidemiological surveillance for cases of lead poisoning, tuberculosis, rabies, and sexually transmitted diseases."

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Public Health Laboratory Fee Temporary Amendment Act of 2002 (D.C. Law 14-208, October 19, 2002, law notification 49 DCR 10464).

Emergency legislation. — For temporary (90 day) addition of section, see § 5 of Department of Health Functions Clarification Emergency Act of 2001 (D.C. Act 14-60, June 6, 2001, 48 DCR 5701).

For temporary (90 day) addition of section, see § 4405 of Fiscal Year 2002 Budget Support

Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

For temporary (90 day) amendment of section, see § 2 of Public Health Laboratory Fee Emergency Amendment Act of 2002 (D.C. Act 14-390, June 21, 2002, 49 DCR 6083).

For temporary (90 day) amendment of section, see § 2 of Public Health Laboratory Fee Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-479, October 3, 2002, 49 DCR 9579).

Legislative history of Law 14-28. — For Law 14-28, see notes following § 7-219.

Legislative history of Law 14-257. — Law 14-257, the "Public Health Laboratory Fee Amendment Act of 2002", was introduced in Council and assigned Bill No. 14-679, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 7, 2002, and December 3, 2002, respectively. Signed by the Mayor on December 23, 2002, it was assigned Act No. 14-554 and transmitted to both Houses of Congress for its review. D.C. Law 14-257 became effective on March 27, 2003.

§ 7-735. Public Health Laboratory Fund. [Repealed].

Repealed.

(Oct. 3, 2001, D.C. Law 14-28, § 4906, 48 DCR 6981; Sept. 14, 2011, D.C. Law 19-21, § 9078(a), 58 DCR 6226.)

Emergency legislation. — For temporary (90 day) addition of section, see § 6 of Department of Health Functions Clarification Emer-

gency Act of 2001 (D.C. Act 14-60, June 6, 2001, 48 DCR 5701).

For temporary (90 day) addition of section,

see § 4406 of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

Legislative history of Law 14-28. — For Law 14-28, see notes following § 7-219.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 7-731.

§ 7-736. Disbursements from the Laboratory Fund. [Repealed].

Repealed.

(Oct. 3, 2001, D.C. Law 14-28, § 4907, 48 DCR 6981; Sept. 14, 2011, D.C. Law 19-21, § 9078(b), 58 DCR 6226.)

Emergency legislation. — For temporary (90 day) addition of section, see § 7 of Department of Health Functions Clarification Emergency Act of 2001 (D.C. Act 14-60, June 6, 2001, 48 DCR 5701).

For temporary (90 day) addition of section, see § 4407 of Fiscal Year 2002 Budget Support

Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

Legislative history of Law 14-28. — For Law 14-28, see notes following § 7-219.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 7-731.

§ 7-736.01. Grant authority.

(a) For fiscal year 2010, the Director of the Department of Health shall have the authority to issue grants to qualified community organizations for the purposes of conducting health promotion, preventing disease, and providing health services; provided, that any grant in excess of \$250,000 shall be awarded through a competitive process unless otherwise authorized under law.

(b) The Department of Health shall submit a quarterly report to the Council on all grants issued pursuant to the authority granted in subsection (a) of this section.

(Oct. 3, 2001, D.C. Law 14-28, § 4907a, as added Mar. 3, 2010, D.C. Law 18-111, § 5011, 57 DCR 181.)

Temporary Amendment of Section. — Section 2 of D.C. Law 18-304 amended subsec. (a) to read as follows: “(a) For fiscal years 2011 through 2014, the Director of the Department of Health shall have the authority to issue grants to Unity Health Care, Incorporated, for the purposes of conducting health promotion, preventing disease, and providing health-care services.”; and repealed subsec. (b).

Section 4(b) of D.C. Law 18-304 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition, see § 5011 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) addition, see § 5011 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

For temporary (90 day) amendment of section, see § 2 of Department of Health Functions Clarification Emergency Amendment Act of 2010 (D.C. Act 18-601, November 17, 2010, 57 DCR 11037).

For temporary (90 day) amendment of section, see § 2 of Department of Health Functions Clarification Emergency Amendment Act of 2011 (D.C. Act 19-258, December 21, 2011, 58 DCR 11226).

For temporary (90 day) amendment of section, see § 2 of the Department of Health Functions Clarification Emergency Amendment Act of 2012 (D.C. Act 19-391, July 13, 2012, 59 DCR 8501).

Legislative history of Law 18-111. — Law 18-111, the “Fiscal Year 2010 Budget Support Act of 2009”, was introduced in Council and assigned Bill No. 18-203, which was referred to the Committee on the Whole. The bill was adopted on first and second readings on May

12, 2009, and September 22, 2009, respectively. Signed by the Mayor on December 18, 2009, it was assigned Act No. 18-255 and transmitted to both Houses of Congress for its review. D.C. Law 18-111 became effective on March 3, 2010.

Short title. — Short title: Section 5010 of D.C. Law 18-111 provided that subtitle B of title V of the act may be cited as the “Department of Health Grant Authority Amendment Act of 2009”.

§ 7-737. Rules.

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, shall issue rules to implement the provisions of this chapter.

(Oct. 3, 2001, D.C. Law 14-28, § 4908, 48 DCR 6981.)

Emergency legislation. — For temporary (90 day) addition of section, see § 8 of Department of Health Functions Clarification Emergency Act of 2001 (D.C. Act 14-60, June 6, 2001, 48 DCR 5701).

For temporary (90 day) addition of section, see § 4408 of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

Legislative history of Law 14-28. — For Law 14-28, see notes following § 7-219.

Delegation of Authority. — Delegation of Authority Pursuant to the Department of Health Functions Clarification Act of 2001 to Regulate Barber Shops, Beauty Salons, and Massage and Spa Establishments, see Mayor’s

Order 2006-10, January 27, 2006 (53 DCR 2711a).

Delegation of Authority under D.C. Law 14-28, the Department of Health Functions Clarification Act of 2001, see Mayor’s Order 2006-34, March 12, 2006 (53 DCR 5073).

Resolutions. — Resolution 15-510, the “Air Quality Control Regulation Implementing Sections 182 and 185 of the Federal Clean Air Act Emergency Approval Resolution of 2004”, was approved effective April 4, 2004.

Resolution 15-512, the “Air Quality Control Regulation Implementing the Severe Area Non-attainment Requirements of the Federal Clean Air Act Emergency Approval Resolution of 2004”, was approved effective April 4, 2004.

Subchapter II. Inspections, Penalties, Waiver, and Employee Rights.

§ 7-741. Definitions.

For the purposes of this subchapter, the term:

(1) “Enclosed area” means all the space between a floor and ceiling that is enclosed on all sides by solid walls or windows or doors, exclusive of doorways, that extend from the floor to the ceiling.

(2) “Place of employment” means an enclosed area under the control of a public or private employer that employees normally frequent during the course of employment, including work areas, employee lounges, restrooms, conference rooms, classrooms, employee cafeterias, hallways, and vehicles owned by a private employer, if the vehicle is used by more than one person, and excludes a private residence, unless it is used as a child care, adult day care, or health care facility.

(3) “Public place” means an enclosed area to which the public is invited or in which the public is permitted, including banks, educational facilities, health care facilities, Laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, nightclubs, retail service establishments, retail stores, shopping malls, sports arenas, taverns, theaters, and waiting rooms, and excludes a private residence, unless it is used as a child care, adult day care, or health care facility.

(4) "Smoking" means the burning of a lighted cigar, cigarette, pipe, or any other matter or substance that contains tobacco.

(5) "Tobacco bar" means a restaurant, tavern, brew pub, club, or nightclub that generates 10% or more of its total annual revenue from the on-site sale of tobacco products, excluding sales from vending machines, or the rental of on-site humidors.

(Oct. 3, 2001, D.C. Law 14-28, § 4915, as added Apr. 4, 2006, D.C. Law 16-90, § 2(b), 53 DCR 1087.)

Cross references. — Restrictions on tobacco smoking, see § 7-1701 et seq.

Legislative history of Law 16-90. — Law 16-90, the "Department of Health Functions Clarification Amendment Act of 2005", was introduced in Council and assigned Bill No. 16-293 which was referred to the Committee on

Health. The Bill was adopted on first and second readings on December 6, 2005, and January 4, 2006, respectively. It was assigned Act No. 16-276 and transmitted to both Houses of Congress for its review. D.C. Law 16-90 became effective on April 4, 2006.

§ 7-742. Smoking prohibitions; inspections.

The Department of Health is authorized to conduct inspections of all places of employment and public places to ensure that the activity of smoking in such places, which is hereby prohibited, is not taking place, except that:

(1) Between April 4, 2006, and January 1, 2007, the smoking prohibition set forth in this section shall not apply to a brew pub, club, nightclub, or tavern as those entities are defined in § 25-101 or the bar and bar area of a restaurant. This exception shall not apply to an indoor restaurant table of a restaurant, as defined in § 25-101.

(2) After January 1, 2007, the exception described in paragraph (1) of this section shall expire and smoking shall be prohibited in all places of employment and public places at all times.

(3) The places described in this chapter shall be required to post signs pursuant to § 7-1704 and in accordance with regulations issued pursuant to subchapter I of Chapter 17 of this title or any other District law.

(Oct. 3, 2001, D.C. Law 14-28, § 4916, as added Apr. 4, 2006, D.C. Law 16-90, § 2(b), 53 DCR 1087.)

Cross references. — Restrictions on tobacco smoking, see § 7-1701 et seq.

Legislative history of Law 16-90. — For Law 16-90, see notes following § 7-741.

§ 7-743. Exemptions.

(a) The following places shall be exempt from the provisions of this subchapter:

(1) A retail store that is used primarily for the sale of tobacco products and accessories in which the total annual revenue generated by the sale of non-tobacco products or accessories is no greater than 25% of the total revenue of the establishment; provided, that it does not share space with any other establishment;

(2) A tobacco bar;

(3) An outdoor area of a restaurant, tavern, club, brew pub, or nightclub;

- (4) A hotel room or motel room rented to one or more guests;
- (5) A medical treatment, research, or nonprofit institution where the activity of smoking is conducted for the purpose of medical research or is an integral part of a smoking cessation program; and
- (6) Theatrical productions.

(b) A hotel licensed under § 25-113 shall be exempt from the provisions of this part once a year for one day for the purposes of hosting a special event which permits cigar smoking; provided, that the hotel shall:

- (1) Notify the Department of Health in writing in advance of the event;
- (2) Pay a fee of \$2,500 to be remitted to the Regulatory Enforcement Fund as established under § 7-732 [repealed]; and
- (3) Permit employees to opt out of working the special event with no penalty.

(Oct. 3, 2001, D.C. Law 14-28, § 4917, as added Apr. 4, 2006, D.C. Law 16-90, § 2(b), 53 DCR 1087; Sept. 14, 2011, D.C. Law 19-21, § 5102, 58 DCR 6226.)

Effect of amendments. — D.C. Law 19-21 designated the existing text as subsec. (a); and added subsec. (b).

Temporary Amendment of Section. — Section 2 of D.C. Law 18-167 designated the existing text as subsec. (a) and added subsec. (b) to read as follows:

“(b) A hotel licensed under D.C. Official Code § 25-113(e) shall be exempt from the provisions of this part once a year for one day for the purposes of hosting a special event which permits cigar smoking; provided, that the hotel:

- “(1) Notifies the Department of Health in writing in advance of the special event;
- “(2) Has a ballroom or special event catering space with an occupancy of 500 or more persons;
- “(3) Permits employees to opt out of working the special event with no penalty; and
- “(4) Pays a fee of \$250 to be remitted to the Department of Health Regulatory Enforcement Fund established under section 4903.”.

Section 4(b) of D.C. Law 18-167 provided that the act shall expire after 225 days of its having taken effect.

Section 3 of D.C. Law 19-53 rewrote subsec. (b) to read as follows:

“(b) A hotel licensed under D.C. Official Code § 25-113 shall be exempt from the provisions of this part once a year for one day for the purposes of hosting a special event that permits cigar smoking; provided, that the hotel shall:

- “(1) Notify the Department of Health in writing in advance of the event;
- “(2) Have a ballroom or special-event-cater-

ing space with an occupancy of 500 or more persons;

“(3) Pay a fee of \$250 to be remitted to the Regulatory Enforcement Fund as established under section 4903;

“(4) Permit employees to opt out of working the special event with no penalty; and

“(5) Have been the recipient of a similar exemption between January 1, 2008, and October 1, 2011.”.

Section 15(b) of D.C. Law 19-53 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2 of Special Event Exemption Emergency Amendment Act of 2010 (D.C. Act 18-326, March 9, 2010, 57 DCR 2200).

For temporary (90 day) amendment of section, see § 5042 of Fiscal Year 2012 Budget Support Emergency Act of 2011 (D.C. Act 19-93, June 29, 2011, 58 DCR 5599).

For temporary (90 day) amendment of section, see § 3 of Revised Fiscal Year 2012 Budget Support Technical Clarification Emergency Amendment Act of 2011 (D.C. Act 19-157, October 4, 2011, 58 DCR 8688).

Legislative history of Law 16-90. — For Law 16-90, see notes following § 7-741.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 7-731.

Short title. — Short title: Section 5101 of D.C. Law 19-21 provided that subtitle K of title V of the act may be cited as “Special Events Exemption Amendment Act of 2011”.

§ 7-744. Penalties.

An employer or person who willfully violates the requirements of this chapter by:

(1) Smoking in a prohibited area shall be subject to a fine of not less than \$100 or more than \$1,000; subsequent offenses shall be subject to a fine of not less than \$200 or more than \$1,000;

(2) Obscuring, removing, defacing, mutilating or destroying any sign posted in accordance with the provisions of this chapter shall be subject to a fine of \$500; or

(3) Failing to post or maintain warning signs describing the prohibited activity and failing to notify a person observed to be smoking to stop the activity, as required by this subsection, shall be subject to a fine of \$500; each day that a violation continues shall constitute a separate offense.

(Oct. 3, 2001, D.C. Law 14-28, § 4918, as added Apr. 4, 2006, D.C. Law 16-90, § 2(b), 53 DCR 1087.)

Legislative history of Law 16-90. — For Law 16-90, see notes following § 7-741.

§ 7-745. Economic hardship waiver.

(a) The Mayor may grant an economic hardship waiver from the requirements of this subchapter; provided, that prior to the granting of a waiver, the applicant establishes, to the satisfaction of the Mayor, that compliance with the requirements of this subchapter has caused or will cause undue financial hardship. An economic hardship waiver shall be based on regulations issued in accordance with § 7-747.

(b) Notwithstanding any other provision of law, places of employment and public places where smoking is permitted pursuant to subsection (a) of this section shall:

(1) Have been in existence on or before January 1, 2007;

(2) Not permit smoking in an area that exceeds 25% of the total area, if the place of employment or public place is a restaurant as defined in § 25-101; and

(3) Be subject to conditions or restrictions as may be necessary to minimize the adverse effects of smoking and shall be consistent with the general purpose of this subchapter.

(Oct. 3, 2001, D.C. Law 14-28, § 4919, as added Apr. 4, 2006, D.C. Law 16-90, § 2(b), 53 DCR 1087.)

Legislative history of Law 16-90. — For Law 16-90, see notes following § 7-741.

§ 7-746. Employee rights and protections.

(a) Places of employment and enclosed public places that permit smoking pursuant to this chapter shall not require employees to work in smoking areas provided that an employee requests to work solely in non-smoking areas.

(1) An employee who is aggrieved by a violation of this subsection shall have a private cause of action against the owner, manager, or person in charge of the place of employment or public place.

(2) An employee shall pursue and exhaust all remedies available pursuant to any collective bargaining agreement, grievance procedure, or other established means of resolving employer-employee disputes to resolve a violation of this subsection prior⁴ to commencing a civil action.

(b) An owner, manager, or other person responsible for a place of employment or public place that permits smoking under this subchapter shall not:

(1) Require an employee to work in a smoking area; provided, the employee requests to work in the non-smoking area only;

(2) Discharge or otherwise discriminate against any employee with respect to compensation or any other term, condition, or privilege of employment on the basis that the employee or applicant requested to work in a non-smoking area; or

(3) Discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded by this chapter or reports a violation of this chapter.

(c) An employee who is aggrieved by a violation of this section shall be entitled to recover damages, including lost or back wages or salary. The court, in its discretion, may allow the prevailing party a reasonable attorney's fee as part of the costs.

(Oct. 3, 2001, D.C. Law 14-28, § 4920, as added Apr. 4, 2006, D.C. Law 16-90, § 2(b), 53 DCR 1087.)

Legislative history of Law 16-90. — For Law 16-90, see notes following § 7-741.

§ 7-747. Rulemaking.

The Mayor is authorized to promulgate rules necessary to implement this chapter. Any proposed regulations issued pursuant to this chapter shall be submitted to the Council for a 60-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed regulations, in whole or in part, by resolution within this 60-day review period, the proposed rules shall be deemed approved.

(Oct. 3, 2001, D.C. Law 14-28, § 4921, as added Apr. 4, 2006, D.C. Law 16-90, § 2(b), 53 DCR 1087.)

Legislative history of Law 16-90. — For Law 16-90, see notes following § 7-741.

CHAPTER 7B. HEALTH PROFESSIONAL RECRUITMENT PROGRAM.

Sec.

- 7-751.01. Definitions.
- 7-751.02. Establishment of Program.
- 7-751.03. Administration of the Program.
- 7-751.04. Eligibility requirements.
- 7-751.05. Release of information.
- 7-751.06. Selection criteria.
- 7-751.07. Program participation.
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Sec.

- 7-751.11. Tax implications.
- 7-751.12. Monitoring during service.
- 7-751.13. Breach of contract.
- 7-751.14. Change of practice site.
- 7-751.15. Suspension, waiver, and termination of contract.
- 7-751.15a. Health Professional Recruitment Fund.
- 7-751.16. Rulemaking.
- 7-751.17. [Repealed].

§ 7-751.01. Definitions.

For the purposes of this chapter, the term:

(1) “Commercial loans” means loans made by banks, credit unions, savings and loan associations, insurance companies, schools, and either financial or credit institutions that are subject to examination and supervision in their capacity as lenders by an agency of the United States or of the State or District in which the lender has its principal place of business.

(2) “Dentist” means a graduate of a an accredited dental school who has completed post-graduate training in specialties of general or pediatric dentistry.

(3) “Director” means Director of the Department of Health or his or her designee.

(4) “Health Professional Shortage Area” and “HPSA” mean a geographic area, population group, or facility in the District of Columbia designated by the United States Department of Health and Human Services as lacking a sufficient number of primary care, dental, or mental health professionals to provide care for residents of the area or community.

(5) “Medically Underserved Area” and “MUA” mean a geographic area in the District of Columbia designated by the United States Department of Health and Human Services as medically underserved.

(6) “Other health professional” means a person who has graduated from an accredited program for registered nurses, nurse midwives, certified registered nurse practitioners, dental hygienists, clinical social workers, clinical psychologists, professional counselors, or physician assistants and has completed any required post-graduate training.

(7) “Physician” means a graduate of an accredited medical school of allopathic or osteopathic medicine who has completed post-graduate training in specialties of family practice medicine, general internal medicine, general pediatrics, obstetrics/gynecology, psychiatry, osteopathic general practice.

(8) “Reasonable educational expenses” means the costs of education, exclusive of tuition, which are considered to be required by the school’s degree program or an eligible program of study, such as fees for room, board, transportation and commuting costs, books, supplies, educational equipment and materials, or clinical travel, which were part of the estimated student budget of the school in which the participant was enrolled.

(9) “Service obligation site” means:

(A) A nonprofit entity located in a Health Professional Shortage Area or a Medically Underserved Area within the District of Columbia that provides primary care, mental health, or dental services to District of Columbia residents regardless of their ability to pay;

(B) A Department of Health program;

(C) A Department of Mental Health program; or

(D) Any other District program designated by the Director as a service obligation site.

(Mar. 8, 2006, D.C. Law 16-71, § 2, 53 DCR 61; Mar. 2, 2007, D.C. Law 16-191, § 103, 53 DCR 6794; Aug. 16, 2008, D.C. Law 17-219, § 5033(a), 55 DCR 7598.)

Effect of amendments. — D.C. Law 16-191, in par. (9), substituted “Shortage” for “Service”.

D.C. Law 17-219, in par. (4), substituted “geographic area, population group, or facility” for “geographic area”; and rewrote pars. (6) and (9).

Legislative history of Law 16-71. — Law 16-71, the “District of Columbia Health Professional Recruitment Program Act of 2005”, was introduced in Council and assigned Bill No. 16-420 which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 1, 2005, and

December 6, 2005, respectively. Signed by the Mayor on December 22, 2005, it was assigned Act No. 16-233 and transmitted to both Houses of Congress for its review. D.C. Law 16-71 became effective on March 8, 2006.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 7-103.

Legislative history of Law 17-219. — For Law 17-219, see notes following § 7-651.17.

Short title. — Short title: Section 5032 of D.C. Law 17-219 provided that subtitle N of title V of the act may be cited as the “Health Professional Recruitment Program Amendment Act of 2008”.

§ 7-751.02. Establishment of Program.

(a) There is hereby established the District of Columbia Health Professional Recruitment Program (“Program”) to serve as a recruitment tool for health professionals within the District of Columbia.

(b) Based on the availability of funds, the Program will pay for the cost of education necessary to obtain a health professional degree. The Program will pay toward the outstanding principal, interest, and related expense of federal, state, or local government loans and commercial loans obtained by the participant for:

- (1) School tuition and required fees incurred by the participant; and
- (2) Reasonable educational expenses.

(Mar. 8, 2006, D.C. Law 16-71, § 3, 53 DCR 61.)

Legislative history of Law 16-71. — For Law 16-71, see notes following § 7-751.01.

§ 7-751.03. Administration of the Program.

(a) The Department of Health shall administer the Program and shall:

- (1) Establish an application process;
- (2) Certify a list of acceptable service obligation sites on an annual basis and make the list publically available;

(3) Conduct regular surveys to ensure participant compliance with the Program;

(4) Disburse all awarded funds; and

(5) Administer any other functions necessary to the Program.

(b) The Department of Health reserves the right to conduct regular inspections to ensure that all service obligations sites meet the definition as set forth in § 7-751.01(9).

(Mar. 8, 2006, D.C. Law 16-71, § 4, 53 DCR 61.)

Legislative history of Law 16-71. — For Law 16-71, see notes following § 7-751.01.

§ 7-751.04. Eligibility requirements.

Individuals eligible for the Program must:

(a) Be a citizen or permanent resident of the United States;

(b) Be a physician, dentist, or other health professional as defined in § 7-751.01;

(c) Be licensed or eligible to practice in the District of Columbia;

(d) Submit a completed application to participate in the Program; and

(e) Have no other obligation for health professional service to the federal, state, or District government, unless such obligation will be completely satisfied prior to the beginning of service under the Program.

(Mar. 8, 2006, D.C. Law 16-71, § 5, 53 DCR 61; Aug. 16, 2008, D.C. Law 17-219, § 5033(b), 55 DCR 7598.)

Effect of amendments. — D.C. Law 17-219, in subsec. (a), inserted “or permanent resident”.

Legislative history of Law 17-219. — For Law 17-219, see notes following § 7-651.17.

Legislative history of Law 16-71. — For Law 16-71, see notes following § 7-751.01.

§ 7-751.05. Release of information.

(a) Any applicant to the Program shall agree to execute a release to allow the Department access to loan records, credit information, and information from lenders necessary to verify eligibility and to determine loan repayments. The applicant is required to submit all requested loan documentation prior to approval by the Program.

(b) It is the responsibility of the participant to negotiate with each lending institution for the terms and conditions of the educational loan repayments. Any penalties associated with early repayment shall be the responsibility of the participant.

(Mar. 8, 2006, D.C. Law 16-71, § 6, 53 DCR 61.)

Legislative history of Law 16-71. — For Law 16-71, see notes following § 7-751.01.

§ 7-751.06. Selection criteria.

(a) Applicants shall be competitively reviewed and selected for participation in the Program based upon the following criteria:

(1) Professional qualifications and relevant experience, including board eligibility or certification in his or her specialty, professional achievements, and other indicators of competency received from supervisors, department chairs, and program directors; and

(2) A demonstrated commitment to serve in a HPSA or MUA.

(b) Preferential consideration will be given to:

(1) Residents of the District of Columbia;

(2) Graduates of accredited District of Columbia health professions schools or program;

(3) Residents of a HPSA or MUA within the District of Columbia;

(4) Applicants that are immediately eligible and available for service;

(5) Applicants that commit to longer periods of service;

(6) Applicants whose service obligation site is also a qualified Medical Homes DC provider;

(7) Applicants who are fluent in Spanish, Chinese, Vietnamese, Korean, or Amharic; and

(8) Applicants who have experience at a community-based primary care facility or attended a community-based health profession educational institution.

(c) For applicants practicing at a service obligation site at the time of application to the Program, preferential consideration shall be given to those individuals who have less than 3 years of employment at the facility.

(Mar. 8, 2006, D.C. Law 16-71, § 7, 53 DCR 61; Aug. 16, 2008, D.C. Law 17-219, § 5033(c), 55 DCR 7598.)

Effect of amendments. — D.C. Law 17-219, in subsec. (b), deleted “and” from the end of par. (5), substituted a semicolon for a period at the end of par. (6), and added pars. (7) and (8).

Legislative history of Law 16-71. — For Law 16-71, see notes following § 7-751.01.

Legislative history of Law 17-219. — For Law 17-219, see notes following § 7-651.17.

§ 7-751.07. Program participation.

(a) As a condition of participation in the Program, selected applicants shall enter into a contract with the Director and a representative of the service obligation site agreeing to the following terms and conditions:

(1) Participants shall provide a minimum of 2 years with a maximum of 4 years services at a service obligation site. Any service beyond the 2 year minimum requirement is dependent upon the availability of funds for the Program.

(2) Participants shall provide full-time service of at least 1,800 hours per year, with no more than 12 hours of work performed in any 24 hour period. On-call status does not count toward the annual 1,800 hour requirement. Any exceptions to the 1,800 hour annual requirement or the on-call provision of this subsection must be approved by the Director prior to placement.

(3) Participants agree to provide reasonable, usual, and customary health services without discrimination and regardless of a patient's ability to pay.

(4) No period of internship, residency, or other advanced clinical training may count toward satisfying a period of obligated service under this Program.

(5) Any participant who is found in breach of contract is deemed to have agreed, as a condition of contract, to all penalties as set forth in § 7-751.13.

(b) An existing contract may be renewed for one year at a time up to a maximum of 4 total years of service, as funds become available.

(c) The participant shall begin service no later than 12 months from entering into the contract. The effective start date of the obligated service is the date of employment or the date the Director signs the contract, whichever is later.

(d) Non-compete clauses are prohibited in all contracts for Program participation.

(Mar. 8, 2006, D.C. Law 16-71, § 8, 53 DCR 61; Mar. 3, 2010, D.C. Law 18-111, § 5111, 57 DCR 181.)

Effect of amendments. — D.C. Law 18-111 rewrote subsec. (a)(2), which had read as follows: “(2) Participants shall provide full-time service of at least 40 hours per week for 45 weeks per year. The minimum 40-hour week must not be performed in less than 4 days per week, with no more than 12 hours of work performed in any 24 hour period. On-call status does not count toward the 40-hour week. Any exceptions to the on-call provision of this subsection must be approved by the Director prior to placement.”

Emergency legislation. — For temporary (90 day) amendment of section, see § 5111 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 5111 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 16-71. — For Law 16-71, see notes following § 7-751.01.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 7-736.01.

Short title. — Short title: Section 5110 of D.C. Law 18-111 provided that subtitle L of title V of the act may be cited as the “Health Professional Recruitment Program Amendment Act of 2009”.

§ 7-751.08. Loan repayment.

(a) Physicians and dentists shall be eligible to have 100% of their total debt, not to exceed \$120,000, repaid by the Program over 4 years of service. For each year of participation, the Program will repay loan amounts according to the following schedule:

(1) For the 1st year of service, 18% of their total debt, not to exceed \$21,600;

(2) For the 2nd year of service, 26% of their total debt, not to exceed \$31,200;

(3) For the 3rd year of service, 28% of their total debt, not to exceed \$33,600; and

(4) For the 4th year of service, 28% of their total debt, not to exceed \$33,600.

(b) Other health professionals shall be eligible to have 100% of their total debt, not to exceed \$66,000, repaid by the Program over 4 years of service. For

each year of participation, the Program will repay loan amounts according to the following schedule:

(1) For the 1st year of service, 18% of their total debt, not to exceed \$11,800;

(2) For the 2nd year of service, 26% of their total debt, not to exceed \$17,200;

(3) For the 3rd year of service, 28% of their total debt, not to exceed \$18,500;

(4) For the 4th year of service, 28% of their total debt, not to exceed \$18,500.

(c) The Director is permitted to increase the dollar amount of the total loan repayment annually to adjust for inflation. All quarterly disbursements shall be adjusted accordingly.

(Mar. 8, 2006, D.C. Law 16-71, § 9, 53 DCR 61.)

Legislative history of Law 16-71. — For Law 16-71, see notes following § 7-751.01.

§ 7-751.09. Disbursement procedure.

(a) The Department of Health shall disburse loan repayment funds to a participant in a 2-year lump sum payment for each contract entered into pursuant to § 7-751.07 within 90 days of the start of the performance under the contract.

(b) For each year of participation beyond the original term of the contract, whether by renewal or continuation of a contract longer than 2 years, the Department of Health shall disburse to the participant a one-year lump sum payment within 90 days of the start of each additional year.

(Mar. 8, 2006, D.C. Law 16-71, § 10, 53 DCR 61; Dec. 2, 2011, D.C. Law 19-47, § 2, 58 DCR 8941.)

Effect of amendments. — D.C. Law 19-47 rewrote the section, which formerly read:

“(a) For the 1st year of participation in the Program, the Department shall disburse loan repayment funds to a participant on a quarterly basis, with the first disbursement to occur within 45 days of the start of service obligation.

“(b) For each additional year of participation in the Program, the Department shall disburse loan repayment funds to a participant on a quarterly basis, with the 1st disbursement to occur within 45 days of the start of the next consecutive year of service.”

Emergency legislation. — For temporary (90 day) amendment of section, see § 2 of Health Professional Recruitment Program Emergency Amendment Act of 2011 (D.C. Act 19-120, August 1, 2011, 58 DCR 6754).

For temporary (90 day) amendment of section, see § 2 of Health Professional Recruitment Program Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-227, November 15, 2011, 58 DCR 9936).

Legislative history of Law 16-71. — For Law 16-71, see notes following § 7-751.01.

Legislative history of Law 19-47. — Law 19-47, the “Health Professional Recruitment Program Amendment Act of 2011”, was introduced in Council and assigned Bill No. 19-158, which was referred to the Committee on Health. The Bill was adopted on first and second readings on July 12, 2011, and September 20, 2011, respectively. Signed by the Mayor on October 11, 2011, it was assigned Act No. 19-177 and transmitted to both Houses of Congress for its review. D.C. Law 19-47 became effective on December 2, 2011.

§ 7-751.10. Compensation during service.

Each participant is responsible for negotiating his or her own compensation package directly with the service obligation site.

(Mar. 8, 2006, D.C. Law 16-71, § 11, 53 DCR 61.)

Legislative history of Law 16-71. — For Law 16-71, see notes following § 7-751.01.

§ 7-751.11. Tax implications.

(a) Repealed.

(b) For purposes of the District of Columbia Office of Tax and Revenue, all loan repayment awards shall not be considered income and are therefore not taxable.

(Mar. 8, 2006, D.C. Law 16-71, § 12, 53 DCR 61; Apr. 8, 2011, D.C. Law 18-370, § 532(a), 58 DCR 1008.)

Effect of amendments. — D.C. Law 18-370 repealed subsec. (a), which had read as follows: “(a) For purposes of the United States Internal Revenue Service, all loan repayment awards are considered income and are therefore taxable. It is the responsibility of each participant to report loan repayment awards received through the Program on all relevant tax and financial documents.”

Emergency legislation. — For temporary (90 day) amendment of section, see § 532(a) of Fiscal Year 2011 Supplemental Budget Support Emergency Act of 2010 (D.C. Act 18-694, January 19, 2011, 58 DCR 662).

Legislative history of Law 16-71. — For Law 16-71, see notes following § 7-751.01.

Legislative history of Law 18-370. — Law

18-370, the “Fiscal Year 2011 Supplemental Budget Support Act of 2010”, was introduced in Council and assigned Bill No. 18-1100, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 7, 2010, and December 21, 2010, respectively. Signed by the Mayor on January 27, 2011, it was assigned Act No. 18-721 and transmitted to both Houses of Congress for its review. D.C. Law 18-370 became effective on April 8, 2011.

Short title. — Short title: Section 531 of D.C. Law 18-370 provided that subtitle D of title V of the act may be cited as “Health Professional Recruitment Program Amendment Act of 2010”.

§ 7-751.12. Monitoring during service.

(a) Participants are required to submit service verification forms to the Department of Health at the conclusion of each 6-month period of participation in the Program. Service verification forms shall contain the following:

(1) A statement attesting to continuous full-time service as required by the Program;

(2) The signature of the participant;

(3) The signature of a representative of the service obligation site; and

(4) Any additional information required by the terms and conditions of the participant’s service contract.

(b) The Department of Health reserves the right to conduct regular participant surveys to ensure compliance with the terms and conditions of the Program.

(Mar. 8, 2006, D.C. Law 16-71, § 13, 53 DCR 61.)

Legislative history of Law 16-71. — For Law 16-71, see notes following § 7-751.01.

§ 7-751.13. Breach of contract.

(a) The following shall constitute a breach of contract:

(1) The failure to begin or complete the required period of service obligation as set forth in the Program contract;

(2) The falsification or misrepresentation of information on the Program application, service verification forms, or other required documents;

(3) The termination of employment at a service obligation site for good cause, as determined by the employer and confirmed by the Director;

(4) The failure to transfer within 6 months to another approved service obligation site upon termination for reasons beyond the participant's control, as described in § 7-751.14(b).

(5) The failure to provide all reasonable, usual, and customary full-time health care service as set forth in the Program contract; or

(6) The failure to comply with any other terms as set forth by this chapter or the Director.

(b) Within one year of the date of a breach of contract, the participant found in breach of contract shall repay the District the greater of \$31,000 or an amount equal to the sum of the following:

(1) The amount of the loan repayments paid to the participant for any period of obligated service not completed;

(2) An amount equal to the product of the number of months of obligated service not completed by the participant multiplied by \$7,500; and

(3) Interest on the amounts specified in paragraphs (1) and (2) of this subsection at the maximum legal prevailing rate, as determined by the Treasurer of the United States, from the date of the breach.

(c) A participant found in breach of contract shall pay a monetary penalty to the District of Columbia of 50% of funds received as a participant in the Program.

(d) Damages are not dischargeable in bankruptcy. Any financial obligation of a participant for payment of damages may not be released by discharge in bankruptcy under Title 11 of the United States Code.

(e) The Department of Health may pursue any additional legal remedies against a participant found to be in breach of contract, including the garnishment of wages and civil penalties.

(Mar. 8, 2006, D.C. Law 16-71, § 14, 53 DCR 61; Aug. 16, 2008, D.C. Law 17-219, § 5033(d), 55 DCR 7598; Apr. 8, 2011, D.C. Law 18-370, § 532(b), 58 DCR 1008.)

Effect of amendments. — D.C. Law 17-219 rewrote subsec. (b), which had read as follows: “(b) A participant found in breach of contract is liable to pay the District of Columbia the difference between the lump sum payment for the year of obligated service and a prorated amount for the days of service obligation left unfulfilled,

beginning on the date the participant caused a breach of contract. This amount shall be repaid within one year of the date of breach of contract, or a longer period as determined by the Director.”

D.C. Law 18-370 rewrote subsec. (b), which had read as follows: “(b) A participant found in

breach of contract shall repay the District of Columbia for each unfulfilled day of service remaining in the participant's period of service obligation. The amount of such repayment shall be determined by dividing the sum amount previously paid to the participant by the number of days of obligated service required for the payment and multiplying the result by the number of unfulfilled days from the time of the breach of contract. This amount shall be paid within one year of the date of the breach of contract, or a longer period as determined by the Director."

Emergency legislation. — For temporary (90 day) amendment of section, see § 532(b) of Fiscal Year 2011 Supplemental Budget Support Emergency Act of 2010 (D.C. Act 18-694, January 19, 2011, 58 DCR 662).

Legislative history of Law 16-71. — For Law 16-71, see notes following § 7-751.01.

Legislative history of Law 17-219. — For Law 17-219, see notes following § 7-651.17.

Legislative history of Law 18-370. — For history of Law 18-370, see notes under § 7-751.11.

§ 7-751.14. Change of practice site.

(a) Any change of service obligation site by a Program participant must receive prior authorization from the Director.

(b) If the employment of a participant is terminated for reasons beyond the participant's control, such as, for example, the closure of a service obligation site, the participant shall transfer to another approved service obligation site within 6 months of termination. The failure to transfer within 6 months shall be considered a breach of the Program contract.

(Mar. 8, 2006, D.C. Law 16-71, § 15, 53 DCR 61.)

Legislative history of Law 16-71. — For Law 16-71, see notes following § 7-751.01.

§ 7-751.15. Suspension, waiver, and termination of contract.

(a)(1) The service obligation of a participant may be suspended without penalty, for a limited period of time, if a participant requires leave beyond the allotted 7 weeks, such as, for example, extended illness, family leave, maternity leave, suspension from practice pending an investigation, not to exceed 12 months, or termination of employment requiring job search and relocation to another eligible practice site.

(2) A suspension shall not relieve the participant of the responsibility to complete the remaining portion of the obligation. A suspension shall not be permitted as a matter of course, but may be allowed at the discretion of the Director.

(b) A waiver of Program contract terms and conditions shall be granted in the following situations:

(1) If the participant suffers from a physical or mental disability resulting in the total and permanent inability of the participant to perform the obligated service, as determined by the Director; or

(2) Repealed.

(c) An obligation of an individual for service or payment of damages shall be terminated upon the death of the individual.

(d) The Director may terminate a contract under the Program with a participant if, not later than August 16 of the year in which the contract became effective, the participant:

- (1) Submits a signed written request to terminate the contract; and
- (2) Repays all amounts of loan repayments paid to the participant under the contract.

(Mar. 8, 2006, D.C. Law 16-71, § 16, 53 DCR 61; Apr. 8, 2011, D.C. Law 18-370, § 532(c), 58 DCR 1008.)

Effect of amendments. — D.C. Law 18-370 rewrote the section heading which had read as follows: “Suspension and waiver of contract”; repealed subsec. (b)(2); and added subsecs. (c) and (d). Prior to repeal, subsec. (b)(2) read as follows: “(2) Death of the participant.”

Emergency legislation. — For temporary (90 day) amendment of section, see § 532(c) of

Fiscal Year 2011 Supplemental Budget Support Emergency Act of 2010 (D.C. Act 18-694, January 19, 2011, 58 DCR 662).

Legislative history of Law 16-71. — For Law 16-71, see notes following § 7-751.01.

Legislative history of Law 18-370. — For history of Law 18-370, see notes under § 7-751.11.

§ 7-751.15a. Health Professional Recruitment Fund.

(a) There is established as a nonlapsing fund the Health Professional Recruitment Fund (“Fund”). All funds deposited into the Fund, and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the sole purpose of providing loan repayments pursuant to the Program without regard to fiscal year limitation, subject to authorization by Congress.

(b) The Mayor shall deposit in the Fund:

(1) All general revenue funds appropriated by a line item in the budget submitted pursuant to § 1-204.46, and authorized by Congress for the purpose of the Program;

(2) All fees and penalties generated pursuant to the Program; and

(3) Any other funds received on behalf of the Fund for the purpose of the Program.

(c) The Department of Health shall administer the Fund from its appropriated operating budget.

(Mar. 8, 2006, D.C. Law 16-71, § 16a, as added Mar. 2, 2007, D.C. Law 16-192, § 5042, 53 DCR 6899; Aug. 16, 2008, D.C. Law 17-219, § 5033(e), 55 DCR 7598; Mar. 25, 2009, D.C. Law 17-353, § 244(d), 56 DCR 1117.)

Effect of amendments. — D.C. Law 17-219 rewrote the section.

D.C. Law 17-353 redesignated the section amended by D.C. Law 17-219, § 5033(e) from § 7-751.16a to § 7-751.15a.

Emergency legislation. — For temporary (90 day) addition, see § 5042 of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) addition, see § 5042 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) addition, see § 5042 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

Legislative history of Law 16-192. — Law 16-192, the “Fiscal Year Budget Support Act of

2006", was introduced in Council and assigned Bill No. 16-679, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 9, 2006, and June 6, 2006, respectively. Signed by the Mayor on August 8, 2006, it was assigned Act No. 16-476 and transmitted to both Houses of Congress for its review. D.C. Law 16-192 became effective on March 2, 2007.

Legislative history of Law 17-219. — For Law 17-219, see notes following § 7-651.17.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 7-161.

Short title. — Short title: Section 5041 of D.C. Law 16-192 provided that subtitle D of title V of the act may be cited as the "Health Professional Recruitment Program Amendment Act of 2006".

Short title: Section 5017 of D.C. Law 17-219 provided that subtitle I of title V of the act may be cited as the "Reporting Requirements Act of 2008".

Editor's notes. — For health professional recruitment program reporting requirements for Fiscal Year 2009, see subtitle I of title V of Law 17-219.

§ 7-751.16. Rulemaking.

The Mayor is authorized to promulgate rules necessary to implement this chapter.

(Mar. 8, 2006, D.C. Law 16-71, § 17, 53 DCR 61.)

Legislative history of Law 16-71. — For Law 16-71, see notes following § 7-751.01.

Delegation of Authority. — Delegation of Authority pursuant to DC Law 16-71, the Dis-

trict of Columbia Health Professional Recruitment Program Act of 2005, see Mayor's Order 2009-176, October 13, 2009 (56 DCR 8480).

§ 7-751.17. Applicability. [Repealed].

Repealed.

(Mar. 8, 2006, D.C. Law 16-71, § 18, 53 DCR 61; Aug. 16, 2008, D.C. Law 17-219, § 7073, 55 DCR 7598.)

Legislative history of Law 16-71. — For Law 16-71, see notes following § 7-751.01.

Legislative history of Law 17-219. — Law 17-219, the "Fiscal Year 2009 Budget Support Act of 2008", was introduced in Council and assigned Bill No. 17-678, which was referred to the Committee of the Whole. The Bill was

adopted on first and second readings on May 13, 2008, and June 3, 2008, respectively. Signed by the Mayor on June 26, 2008, it was assigned Act No. 17-419 and transmitted to both Houses of Congress for its review. D.C. Law 17-219 became effective on August 16, 2008.

CHAPTER 7C. DEPARTMENT ON DISABILITY SERVICES.

| Sec. | Sec. |
|---|--|
| 7-761.01. Short title. | 7-761.06b. Reports and notices to be made available to the public. |
| 7-761.02. Definitions. | 7-761.07. Medicaid services. |
| 7-761.03. Establishment and purpose of the Department on Disability Services. | 7-761.08. Transfers of authority. |
| 7-761.04. Organization. | 7-761.09. Rulemaking and contracting authority. |
| 7-761.05. Duties. | 7-761.10. Delegation and redelegation of authority. |
| 7-761.06. Appointment and authority of the Director. | 7-761.11. Rescission. |
| 7-761.06a. Reporting requirements. | |

§ 7-761.01. Short title.

This chapter may be cited as the “Department on Disability Services Establishment Act of 2006”.

(Mar. 14, 2007, D.C. Law 16-264, § 101, 54 DCR 818.)

Emergency legislation. — For temporary (90 day) addition, see § 101 of Developmental Disabilities Services Management Reform Emergency Amendment Act of 2006 (D.C. Act 16-672, December 28, 2006, 54 DCR 1155).

Legislative history of Law 16-264. — Law 16-264, the “Developmental Disabilities Service Management Reform Amendment Act of 2006”, was introduced in Council and assigned

Bill No. 16-398, which was referred to Committee on Human Services. The Bill was adopted on first and second readings on December 5, 2006, and December 19, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-620 and transmitted to both Houses of Congress for its review. D.C. Law 16-264 became effective on March 14, 2007.

§ 7-761.02. Definitions.

For the purposes of this chapter, the term:

(1) “Community-based services” means non-residential specialized or generic services for the evaluation, care, and habilitation of persons with mental retardation, in a community setting, directed toward the intellectual, social, personal, physical, emotional, or economic development of a person with mental retardation. Such services shall include, but not be limited to, diagnosis, evaluation, treatment, day care, training, education, sheltered employment, recreation, counseling of the person with mental retardation and his or her family, protective and other social and socio-legal services, information and referral, and transportation to assure delivery of services to persons of all ages with mental retardation.

(2) “Consumer” means a resident of the District of Columbia who is receiving, or eligible to receive, services from the Department on Disability Services.

(3) “Department” or “DDS” means the Department on Disability Services established by § 7-761.03.

(4) “DHS” means the Department of Human Services.

(5) “Director” means the Director of the Department on Disability Services.

(6) “Habilitation” means the process by which a person is assisted to acquire and maintain those life skills which enable him or her to cope more

effectively with the demands of his or her own person and of his or her own environment, including, in the case of a person committed under § 7-1304.06a, to refrain from committing crimes of violence or sex offenses, and to raise the level of his or her physical, intellectual, social, emotional, and economic efficiency. The term “habilitation” includes, but is not limited to, the provision of community-based services.

(7) “Home and community-based services waiver” means a Medicaid home and community-based services waiver approved under section 1915(c) of the Social Security Act, approved August 13, 1981 (95 Stat. 809; 42 U.S.C. § 1396n).

(8) “Medical Assistance Administration” or “MAA” means the division of the Department of Health responsible for administering the District’s Medical Assistance Program, or its successor agency.

(9) “Medical Assistance Program” and “Medicaid Program” mean the program described in the Medicaid State Plan and administered by the Medical Assistance Administration pursuant to § 1-307.02(b), and Title XIX of the Social Security Act, approved July 30, 1965 (79 Stat. 343; 42 U.S.C. § 1396 et seq.).

(10) “Mental retardation” or “persons with mental retardation” means a substantial limitation in capacity that manifests before 18 years of age and is characterized by significantly subaverage intellectual functioning, existing concurrently with 2 or more significant limitations in adaptive functioning.

(11) “MRDDA” means the former Mental Retardation and Developmental Disabilities Administration within the Department of Human Services.

(12) “Resident of the District of Columbia” shall have the same meaning as provided in § 7-1301.03(22).

(13) “RSA” means the Rehabilitation Services Agency within the Department of Human Services.

(Mar. 14, 2007, D.C. Law 16-264, § 102, 54 DCR 818.)

Emergency legislation. — For temporary (90 day) addition, see § 102 of Developmental Disabilities Services Management Reform Emergency Amendment Act of 2006 (D.C. Act 16-672, December 28, 2006, 54 DCR 1155).

Legislative history of Law 16-264. — For Law 16-264, see notes following § 7-761.01.

§ 7-761.03. Establishment and purpose of the Department on Disability Services.

Pursuant to § 1-204.04(b), the Department on Disability Services is established as a separate Cabinet-level agency, subordinate to the Mayor, within the executive branch of the District of Columbia, for the purpose of:

(1) Leading the reform of the District’s mental retardation and developmental disabilities system by coordinating the collaborative efforts of government agencies, contractor providers, Medicaid waiver providers, labor, and community leaders to improve the care and habilitation services provided to consumers;

(2) Ensuring that District laws, regulations, programs, policies, and

budgets are developed and implemented to promote inclusion and integration, independence, self-determination, choice, and participation in all aspects of community life for individuals with developmental disabilities and their families; and

(3) Promoting the well-being of individuals with developmental disabilities throughout their life spans, through the delivery of individualized, high-quality, safe services and supports.

(Mar. 14, 2007, D.C. Law 16-264, § 103, 54 DCR 818.)

Emergency legislation. — For temporary (90 day) addition, see § 103 of Developmental Disabilities Services Management Reform Emergency Amendment Act of 2006 (D.C. Act 16-672, December 28, 2006, 54 DCR 1155).

Legislative history of Law 16-264. — For Law 16-264, see notes following § 7-761.01.

§ 7-761.04. Organization.

(a) The Department shall have sufficient staff, supervisory personnel, and resources to accomplish the purposes of this chapter.

(b) The Director shall have the authority to organize the Department as the Director may determine is necessary and appropriate to carry out the Department's mission.

(Mar. 14, 2007, D.C. Law 16-264, § 104, 54 DCR 818.)

Emergency legislation. — For temporary (90 day) addition, see § 104 of Developmental Disabilities Services Management Reform Emergency Amendment Act of 2006 (D.C. Act 16-672, December 28, 2006, 54 DCR 1155).

Legislative history of Law 16-264. — For Law 16-264, see notes following § 7-761.01.

§ 7-761.05. Duties.

The Department shall:

(1) Provide services and supports to consumers in accordance with:

(A) Chapter 13 of this title; and

(B) Section 109 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000, approved October 30, 2000 (114 Stat. 1692; 42 U.S.C. § 15009);

(2) No later than June 30, 2007, provide services and supports in accordance with subchapter II of Chapter 3 of Title 32 [§ 32-331 et seq.];

(3) Establish rules, quality standards, and policies for all services and supports, including Medicaid-funded services;

(4) Execute provider agreements and, in consultation with MAA, establish rates for all services and supports, including Medicaid-funded services;

(5) In conjunction with other District agencies and directed by a comprehensive quality management plan which makes clear that facility licensure and certification is an integral component of the Department's overall responsibility, monitor the provision of all services and supports and investigate, remediate, and enforce quality standards for all services and supports, including Medicaid-funded services;

(6) Identify federal and other appropriate funding opportunities for services and supports for individuals with developmental disabilities and their families, and directly pursue, and recommend and encourage other agencies to pursue, funding opportunities, where appropriate;

(7) In the establishment of a waiting list for supports and services, DDS shall confer with residents with intellectual and developmental disabilities and their families, service providers, and advocates to provide information to the Department in developing rules and procedures, which shall provide:

(A) That persons on the waiting list begin to receive supports and services within a reasonable period of time;

(B) That the allocation of supports and services is based on a fair, equitable, and consistent method;

(C) That the minimum supports and services are available to all eligible persons;

(D) The supports and services for which a waiting list will be established;

(E) How a person is placed on the waiting list;

(F) The criteria that determine rank on the waiting list;

(G) The criteria for providing immediate services to a person on the waiting list:

(i) If the person is homeless or at imminent risk of becoming homeless, as these terms are defined in § 4-751.01(18) and (23); or

(ii) If there is a reasonable belief that the person is in imminent danger or will be subject to abuse or neglect if the person does not receive immediate support or service;

(H) The process for a person to appeal his or her placement or rank on the waiting list; and

(I) The notice procedure for informing a person of his or her placement on the waiting list, including how long the person can expect to wait for supports and services;

(8) In partnership with residents with intellectual and developmental disabilities and their families, service providers, and advocates, through work groups, sponsor forums, or other type of assembly that ensures meaningful community participation, conduct a needs assessment of District residents with intellectual and developmental disabilities and their families, which shall be published no later than September 30, 2010; and

(9)(A) Maximize Medicaid revenues by requiring, as of January 1, 2012, an individual to obtain and maintain District Medicaid eligibility for purposes of receiving supports and services from a District Medicaid-eligible provider or requiring the individual to make full payment directly to the provider for such supports and services; provided, that this requirement shall not apply to a person:

(i) Who is a former resident of Forest Haven;

(ii) Whose needs cannot reasonably be met by a District Medicaid provider;

(iii) Who is eligible for enrollment in the D.C. Healthcare Alliance; or

(iv) Whose representative payee for the purposes of Social Security benefits is the Department of Disability Services or a provider agency who is

contracted with the District to provide supports and services for that person, if the reason the person lost Medicaid eligibility is due to a failure by the representative payee.

(B) The Department of Disability Services shall work with and support the person to become District Medicaid-eligible and to maintain District Medicaid eligibility, and the person and his or her representatives, estate, or both shall fully cooperate in such efforts.

(Mar. 14, 2007, D.C. Law 16-264, § 105, 54 DCR 818; Mar. 3, 2010, D.C. Law 18-111, § 5071(a), 57 DCR 181; Sept. 14, 2011, D.C. Law 19-21, § 5003, 58 DCR 6226.)

Effect of amendments. — D.C. Law 18-111, in par. (5), deleted “; and” from the end; in par. (6), substituted a semicolon for a period at the end; and added pars. (7) and (8).

D.C. Law 19-21 deleted “and” from the end of par. (7)(I); substituted “; and” for a period the end of par. (8); and added par. (9).

Emergency legislation. — For temporary (90 day) addition, see § 105 of Developmental Disabilities Services Management Reform Emergency Amendment Act of 2006 (D.C. Act 16-672, December 28, 2006, 54 DCR 1155).

For temporary (90 day) amendment of section, see § 5071(a) of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 5071(a) of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 16-264. — For Law 16-264, see notes following § 7-761.01.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 7-736.01.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 7-731.

Short title. — Short title: Section 5070 of D.C. Law 18-111 provided that subtitle H of title V of the act may be cited as the “Department on Disability Services Reporting, Waiting List, and Assessment Amendment Act of 2009”.

§ 7-761.06. Appointment and authority of the Director.

(a) The Department shall be headed by a Director who shall report to the Mayor. The Mayor shall appoint the Director with the advice and consent of the Council pursuant to § 1-523.01(a).

(b) The Director shall:

(1) Hold at least a master’s degree or its equivalent in human services, clinical services, human service management, public administration, social work, or a related field;

(2) Have relevant work experience; and

(3) Possess:

(A) Demonstrated knowledge of current best-practice policies, programs, services, and supports for individuals with developmental disabilities;

(B) Familiarity with local and federal funding streams supporting services to people with developmental disabilities; and

(C) Experience managing human service programs.

(c) The Director shall serve as the administrative chief of the Department, and may organize personnel, re-delegate authority, develop programs, and take any other action, consistent with appropriations, as warranted to accomplish the purpose and mission of the Department or to satisfy the requirements of applicable court orders.

(d) The Mayor shall delegate to the Director all personnel authority, including full authority to hire, retain, and terminate personnel, and the

Director shall exercise that personnel authority independent of the Office of Personnel and consistent with applicable court orders.

(e) The Mayor shall delegate to the Director all procurement authority, including contracting and contracting oversight, and the Director shall exercise that procurement authority independent of the Office of Contracting and Procurement and consistent with applicable court orders.

(f) The Mayor shall fix the compensation of the Director pursuant to subchapter X-A of Chapter 6 of Title 1 [§§ 1-610.51 — 1-610.63].

(Mar. 14, 2007, D.C. Law 16-264, § 106, 54 DCR 818.)

Emergency legislation. — For temporary (90 day) addition, see § 106 of Developmental Disabilities Services Management Reform Emergency Amendment Act of 2006 (D.C. Act 16-672, December 28, 2006, 54 DCR 1155).

Legislative history of Law 16-264. — For Law 16-264, see notes following § 7-761.01.

§ 7-761.06a. Reporting requirements.

(a) The Mayor shall publish reports on persons seeking and receiving services from the Department. Each report shall provide a monthly and year-to-date statistical profile of:

(1) Persons who have applied for services, organized by:

(A) Referral source;

(B) Application status; and

(C) Average length of time spent in each stage of the application process;

(2) Eligible persons who have requested but not yet received one or more services, organized by service type;

(3) Persons receiving services, organized by service type; and

(4) Persons terminated from services, organized by reason for termination.

(b) The Mayor shall publish the reports required under subsection (a) of this section on a bimonthly basis throughout fiscal year 2010 and on a quarterly basis thereafter, no later than the 15th day following the end of the month or quarter for which the report is required.

(Mar. 14, 2007, D.C. Law 16-264, § 106a, as added Mar. 3, 2010, D.C. Law 18-111, § 5071(b), 57 DCR 181.)

Emergency legislation. — For temporary (90 day) addition, see § 5071(b) of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

§ 5071(b) of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 18-111. — For Law 18-111, see notes following § 7-736.01.

§ 7-761.06b. Reports and notices to be made available to the public.

The Department shall make all reports and notices required under this

chapter available on its website within one business day of publication, and shall provide copies to the public upon request.

(Mar. 14, 2007, D.C. Law 16-264, § 106b, as added Mar. 3, 2010, D.C. Law 18-111, § 5071(b), 57 DCR 181.)

Emergency legislation. — For temporary (90 day) addition, see § 5071(b) of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) addition, see

§ 5071(b) of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 18-111. — For Law 18-111, see notes following § 7-736.01.

§ 7-761.07. Medicaid services.

(a) The Department and the Medical Assistance Administration shall enter into an agreement for the Department to direct policy development and design of services and supports provided under the home and community-based services waiver, including policies, services, and supports related to the operation of intermediate care facilities for persons with mental retardation.

(b) Nothing in this chapter shall affect the status of the Medical Assistance Administration as the single state agency for the administration of the Medicaid Program under section 1902(a)(5) of the Social Security Act, approved July 30, 1965 (79 Stat. 344; 42 U.S.C. § 1396a(a)(5)).

(Mar. 14, 2007, D.C. Law 16-264, § 107, 54 DCR 818.)

Emergency legislation. — For temporary (90 day) addition, see § 107 of Developmental Disabilities Services Management Reform Emergency Amendment Act of 2006 (D.C. Act 16-672, December 28, 2006, 54 DCR 1155).

Legislative history of Law 16-264. — For Law 16-264, see notes following § 7-761.01.

§ 7-761.08. Transfers of authority.

(a) All real or personal property, leased or assigned to the Department of Human Services on behalf of the Mental Retardation and Developmental Disabilities Administration, positions, assets, records, and obligations, and all unexpended balances of appropriations, allocations, and other funds available or to be made available relating to those powers, duties, functions, and operations of the DHS as set forth in, and utilized to carry out, section III(U) of part B of subchapter IV of Chapter 15 of Title 1, [lexis.com link: § 1-15-15], relating to MRDDA, are transferred to the Department.

(b) No later than June 30, 2007, all real or personal property, leased or assigned to the Department of Human Services on behalf of the Rehabilitation Services Administration, positions, assets, records, and obligations, and all unexpended balances of appropriations, allocations, and other funds available or to be made available relating to those powers, duties, functions, and operations of the DHS as set forth in, and utilized to carry out, section III(V) of part B of subchapter IV of Chapter 15 of Title 1 [of the Reorganization Plan No. 3 of 1986 [lexis.com link: § 1-15-15], effective January 3, 1987] and those functions and operations of the DHS pertaining only to social security

disability and social security income eligibility determinations as set forth in, and utilized to carry out, section III(T) of part B of subchapter IV of Chapter 15 of Title 1 [lexis.com link: § 1-15-15], relating to RSA, shall be transferred to the Department.

(c) The Chief Financial Officer shall promptly create within the system of accounting and reporting a separate account for the appropriations and expenditures of the Department, distinct from the accounts of DHS.

(d)(1) All of the authority and functions of the DHS as set forth in section III(U) of part B of subchapter IV of Chapter 15 of Title 1 [lexis.com link: § 1-15-15], are transferred to the Department.

(2) No later than June 30, 2007, all of the authority and functions of the DHS as set forth in section III(V) of part B of subchapter IV of Chapter 15 of Title 1 [lexis.com link: § 1-15-15], and the authority and functions pertaining to social security disability and social security income eligibility determinations as set forth in section III(T) of part B of subchapter IV of Chapter 15 of Title 1 [lexis.com link: § 1-15-15], shall be transferred to the Department.

(Mar. 14, 2007, D.C. Law 16-264, § 108, 54 DCR 818.)

Emergency legislation. — For temporary (90 day) addition, see § 108 of Developmental Disabilities Services Management Reform Emergency Amendment Act of 2006 (D.C. Act 16-672, December 28, 2006, 54 DCR 1155).

Legislative history of Law 16-264. — For Law 16-264, see notes following § 7-761.01.

Mayor's Orders. — Designation of the Office of Human Rights as the Administrator of the Client Assistance Program, see Mayor's Order 2010-66, May 14, 2010 (57 DCR 4283).

§ 7-761.09. Rulemaking and contracting authority.

(a) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, may issue rules as necessary to implement the provisions of this chapter.

(b) Pursuant to Unit A of Chapter 3 of Title 2, the Mayor may execute contracts, grants, and other legally binding documents to implement the provisions of this chapter.

(Mar. 14, 2007, D.C. Law 16-264, § 109, 54 DCR 818.)

Emergency legislation. — For temporary (90 day) addition, see § 109 of Developmental Disabilities Services Management Reform Emergency Amendment Act of 2006 (D.C. Act 16-672, December 28, 2006, 54 DCR 1155).

Legislative history of Law 16-264. — For Law 16-264, see notes following § 7-761.01.

§ 7-761.10. Delegation and redelegation of authority.

The Department and its Director shall be the successors to all mental retardation and developmental disabilities-related authority delegated to the DHS and its Director, and the Director of the Department shall be authorized to act, either personally or through a designated representative, as a member of any committees, commissions, boards, or other bodies that include as a member the Director of the DHS with respect to mental retardation and developmental disabilities-related authority.

(Mar. 14, 2007, D.C. Law 16-264, § 110, 54 DCR 818.)

Emergency legislation. — For temporary (90 day) addition, see § 110 of Developmental Disabilities Services Management Reform Emergency Amendment Act of 2006 (D.C. Act 16-672, December 28, 2006, 54 DCR 1155).

Legislative history of Law 16-264. — For Law 16-264, see notes following § 7-761.01.

Mayor's Orders. — Establishment of the State Independent Living Council as an Independent Commission, see Mayor's Order 2010-105, June 25, 2010 (57 DCR 5554).

§ 7-761.11. Rescission.

All organizational orders and parts thereof in conflict with any of the provisions of this chapter are rescinded, except that any regulations adopted or promulgated by virtue of the authority granted by such orders shall remain in force until revised, amended, or repealed.

(Mar. 14, 2007, D.C. Law 16-264, § 111, 54 DCR 818.)

Emergency legislation. — For temporary (90 day) addition, see § 111 of Developmental Disabilities Services Management Reform Emergency Amendment Act of 2006 (D.C. Act 16-672, December 28, 2006, 54 DCR 1155).

Legislative history of Law 16-264. — For Law 16-264, see notes following § 7-761.01.

CHAPTER 7D. DEPARTMENT OF HEALTH CARE FINANCE.

Sec.

7-771.01. Definitions.

7-771.02. Establishment of the Department of Health Care Finance.

7-771.03. Purpose of the Department.

7-771.04. Appointment of Director.

7-771.05. Duties of Director.

7-771.06. Department organization.

7-771.07. Powers and duties of the Department.

Sec.

7-771.08. Temporary personnel and procurement authority.

7-771.09. Transition process.

7-771.10. Date of transfer of assets and authority.

7-771.11. Continuation of rules and regulations.

§ 7-771.01. Definitions.

For the purposes of this chapter, the term:

(1) "Attorney General" means the Attorney General for the District of Columbia.

(2) "CMPA" means Chapter 6 of Title 1, [§ 1-601.01 et seq.].

(3) "Department" means the Department of Health Care Finance established by § 7-771.02.

(4) "Department CFO" means the Chief Financial Officer for the Department of Health Care Finance.

(5) "District CFO" means the Chief Financial Officer of the District of Columbia.

(6) "DOH" means the Department of Health.

(7) "MAA" means the Medical Assistance Administration.

(8) "PPA" means Unit A of Chapter 3 of Title 2, [§ 2-301.01 et seq.].

(Feb. 27, 2008, D.C. Law 17-109, § 2, 55 DCR 216.)

Legislative history of Law 17-109. — Law 17-109, the "Department of Health Care Finance Establishment Act of 2007", was introduced in Council and assigned Bill No. 17-76 which was referred to the Committee on Health. The Bill was adopted on first and second readings on November 6, 2007, and

December 11, 2007, respectively. Signed by the Mayor on December 27, 2007, it was assigned Act No. 17-227 and transmitted to both Houses of Congress for its review. D.C. Law 17-109 became effective on February 27, 2008.

Editor's notes. — Section 7090 of D.C. Law 17-219 repealed section 13 of D.C. Law 17-109.

§ 7-771.02. Establishment of the Department of Health Care Finance.

Pursuant to § 1-204.04(b), there is established a Department of Health Care Finance as a separate, cabinet-level agency, subordinate to the Mayor, within the executive branch of the government of the District of Columbia.

(Feb. 27, 2008, D.C. Law 17-109, § 3, 55 DCR 216.)

Emergency legislation. — For temporary (90 day) addition of section, see § 5014 of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) addition of section,

see § 5014 of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 17-109. — For Law 17-109, see notes following § 7-771.01.

§ 7-771.03. Purpose of the Department.

The Department shall:

(1) Maximize the well-being and quality of life for eligible low-income individuals and other populations through the provision of leadership and direction in administering responsive, effective, and efficient health-care benefits;

(2) Develop a comprehensive, efficient, and cost-effective health-care system for the District's uninsured, under-insured, and low-income residents;

(3) Develop eligibility, service coverage, and service delivery and reimbursement policies for the District's health-care-financing programs that ensure improved access and efficient delivery of service;

(4) Ensure that District health-care programs maximize available federal financial assistance; and

(5) Support the health-care policy, delivery, and access initiatives of the Department of Health and other District agencies through sound health-care financing.

(Feb. 27, 2008, D.C. Law 17-109, § 4, 55 DCR 216.)

Legislative history of Law 17-109. — For Law 17-109, see notes following § 7-771.01.

§ 7-771.04. Appointment of Director.

The Department shall be headed by a Director, who shall:

(1) Be appointed by the Mayor with the advice and consent of the Council, pursuant to § 1-523.01(a);

(2) Be qualified by experience and training to carry out the purposes of the Department as set forth in § 7-771.03; and

(3) Serve at the pleasure of the Mayor.

(Feb. 27, 2008, D.C. Law 17-109, § 5, 55 DCR 216.)

Legislative history of Law 17-109. — For Law 17-109, see notes following § 7-771.01.

§ 7-771.05. Duties of Director.

In addition to other duties as may be lawfully imposed, the Director shall:

(1) Supervise and direct the Department, organizing the Department for its efficient operation, including creating offices within the Department, as necessary, and exercising any other powers necessary and appropriate to implement the provisions of this chapter;

(2) Receive, manage, and disburse all local and federal funds for operations and medical-assistance purposes of the Department;

(3) Exercise personnel authority as appropriate to perform the functions of the Department consistent with Chapter 6 of Title 1 [§ 1-601.01 et seq.];

(4) Execute grants, contracts, memoranda of agreement and understanding, or other agreements with governmental bodies, public and private agencies, institutions, and organizations on behalf of the Department;

(5) Collaborate with other District agencies to ensure the coordination of Department initiatives that may affect or involve programs within other District agencies; and

(6) Promulgate and implement rules and regulations necessary and appropriate to accomplish his or her duties and the Department's functions in accordance with subchapter I of Chapter 5 of Title 2.

(Feb. 27, 2008, D.C. Law 17-109, § 6, 55 DCR 216.)

Legislative history of Law 17-109. — For Law 17-109, see notes following § 7-771.01.

§ 7-771.06. Department organization.

The Department shall:

(1) Have a Chief Financial Officer separate from any financial cluster, who shall:

(A) Be appointed by the Chief Financial Officer of the District of Columbia after consultation with the Director;

(B) Be qualified by experience and training to carry out accounting, budgeting, and financial management functions;

(C) Report directly to, be ultimately responsible to, and be under the supervisory direction of the District CFO, through the Director;

(D) Engage in the accounting, budgeting, and financial management functions as authorized by the District CFO;

(E) Serve as a member of the Department management team;

(F) Advocate for and advance the policy objectives of the Director, to the extent consistent with the ultimate responsibility of the Department CFO to, and supervisory control by, the District CFO; and

(G) Be subject to evaluation, discipline, and transfer by the District CFO, in consultation with the Director;

(2) Have a general counsel or the equivalent, who shall:

(A) Be appointed by the Attorney General for the District of Columbia as an employee of the Office of the Attorney General, after consultation with the Director;

(B) Be an attorney admitted to the practice of law in the District of Columbia;

(C) Be qualified by experience and training to advise the Department with respect to legal issues related to its powers and duties;

(D) Be in the Senior Executive Attorney Service as an at-will employee under the direction and control of the Attorney General;

(E) Be subject to all applicable provisions of subchapter VIII-B of Chapter 6 of Title 1 [§ 1-608.51 et seq.];

(F) Have an attorney-client relationship with the Department;

(G) Advocate vigorously for the positions of the Department on legal issues, and if that advocacy poses a conflict with a legal position of the Attorney General, seek exemption from the supervision of the Attorney General as to that position, in accordance with § 1-608.55(b); and

(H) Be subject to evaluation, discipline, and transfer by the Attorney General, after consultation with the Director; and

(3) Have sufficient staff, supervisory personnel, and resources, and be organized to carry out the functions and duties set forth in this chapter.

(Feb. 27, 2008, D.C. Law 17-109, § 7, 55 DCR 216.)

Legislative history of Law 17-109. — For Law 17-109, see notes following § 7-771.01.

§ 7-771.07. Powers and duties of the Department.

Notwithstanding any other provision of law, the Department shall:

(1) Be the single state agency, successor to the Medical Assistance Administration, for the administration of the Medicaid Program under section 1902(a)(5) of the Social Security Act, approved July 30, 1965 (79 Stat. 344; 42 U.S.C. § 1396a(a)(5));

(2) Administer the D.C. HealthCare Alliance program and any other publicly funded health-care insurance program;

(3) Coordinate with the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services on all waivers, State Plan amendments, demonstration grants, and other opportunities to maximize federal assistance and fulfill the purposes of the Department as set forth in § 7-771.03;

(4) Coordinate with other District government agencies to ensure effective and efficient use of Medicaid dollars, including providing training and technical assistance to ensure proper and timely billing and claims processing;

(5) Cooperate with other District agencies to ensure coordinated health-care access and delivery for publicly funded health-care services;

(6) Collaborate with the District agency responsible for eligibility determination in monitoring enrollment and beneficiary-outreach efforts;

(7) Engage providers and clients in eligibility, access, quality-of-care, and reimbursement issues;

(8) Develop and maintain a comprehensive information-technology infrastructure that accurately and efficiently processes claims, interfaces with other necessary public, private, and nonprofit information-technology systems, and collects information for data analysis of trending, cost measurement, performance management, policy development, and strategic planning;

(9) Develop a long-term-care-finance infrastructure, in cooperation with other District agencies, including the Department of Disability Services, Office on Aging, Long-Term Care Ombudsman, and DOH;

(10) Promote cost-containment initiatives through policy development, best-practice implementation, grant development, innovative strategies to leverage funding sources, and strategic planning;

(11) Develop an annual budget for the Department to be submitted to the Council by the Mayor, in accordance with § 1-204.42; and

(12) Exercise any other power or duty necessary to fulfill the purposes of the Department as set forth in § 7-771.03.

(Feb. 27, 2008, D.C. Law 17-109, § 8, 55 DCR 216.)

Legislative history of Law 17-109. — For Law 17-109, see notes following § 7-771.01.

§ 7-771.08. Temporary personnel and procurement authority.

Effective until October 1, 2009, the Department shall exercise:

(1) Personnel authority to hire, retain, and terminate personnel as appropriate to perform the functions of the Department consistent with Chapter 6 of Title 1, including establishing compensation and reimbursement consistent with the District's wage grade and non-wage grade schedules and the Congressionally approved budget; and

(2) Procurement authority independent of the Office of Contracting and Procurement, consistent with Unit A of Chapter 3 of Title 2 [§ 2-351.01 et seq.]; except with regard to the powers and duties set forth in § 2-301.05(a), (b), (c), and (e).

(Feb. 27, 2008, D.C. Law 17-109, § 9, 55 DCR 216.)

Legislative history of Law 17-109. — For Law 17-109, see notes following § 7-771.01.

§ 7-771.09. Transition process.

(a) No later than March 1, 2008, the Mayor shall submit a proposed transition plan, which has been approved by the Chief Financial Officer and which is accompanied by a proposed resolution, to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess, that identifies:

(1) All the powers, duties, functions, operations, real and personal property, positions, assets, records, and obligations, and all unexpended balances of appropriations, allocations, and other funds available, or to be made available, including those from the MAA and the Health Care Safety Net Administration, that are used to accomplish the purposes of the Department as set forth in § 7-771.03;

(2) The powers, duties, functions, operations, real and personal property, positions, assets, records, and obligations, and all unexpended balances of appropriations, allocations, and other funds available, or to be made available, that will be transferred to the Department;

(3) The impact of the proposed transfers on the budget of DOH and on the budgets of each affected District agency;

(4) The personnel who shall form the transition team and who shall be accountable for the monitoring and allocation of functions and assets to be transferred to the Department; and

(5) The procedure by which other District government agencies shall pre-approve claims and allow providers to submit bills directly to the Department, enabling the Department to satisfy valid claims from all available funding sources.

(b) If the Council does not approve or disapprove the proposed transition

plan, in whole or in part, by resolution within the 45-day review period, the proposed transition plan shall be deemed approved;

(c) Nothing in this section shall affect any requirements imposed upon the Mayor by subchapter I of Unit A of Chapter 3 of Title 2, [§ 2-301.01 et seq.].

(Feb. 27, 2008, D.C. Law 17-109, § 10, 55 DCR 216.)

Legislative history of Law 17-109. — For Law 17-109, see notes following § 7-771.01.

§ 7-771.10. Date of transfer of assets and authority.

No later than October 1, 2008, the transition plan required by § 7-771.09, as approved, shall be implemented.

(Feb. 27, 2008, D.C. Law 17-109, § 11, 55 DCR 216.)

Legislative history of Law 17-109. — For Law 17-109, see notes following § 7-771.01.

§ 7-771.11. Continuation of rules and regulations.

All rulemaking and regulations for the administration of the District Medicaid Program and D.C. Health Care Alliance Program, issued under appropriate authority, shall continue in full force and effect.

(Feb. 27, 2008, D.C. Law 17-109, § 12, 55 DCR 216.)

Legislative history of Law 17-109. — For Law 17-109, see notes following § 7-771.01.

SUBTITLE B. CHILD AND INFANT SCREENING; EARLY INTERVENTION.

CHAPTER 8. PREVENTION OF BLINDNESS IN INFANTS.

| | |
|--|--|
| Sec. | Sec. |
| 7-801. Prophylactic solution to be administered. | 7-803. Treatment by other than registered physician. |
| 7-802. Report of eye inflammation; treatment. | 7-804. Penalty. |

§ 7-801. Prophylactic solution to be administered.

The Mayor may, upon the advice of the Commissioner of Public Health and pursuant to subchapter I of Chapter 5 of Title 2, issue rules to prevent and monitor the occurrence of ophthalmia in newborns. Unless the Mayor provides otherwise, each physician or nurse-midwife who delivers or otherwise assumes the initial care of a newborn shall immediately upon that delivery or assumption of care administer to each eye of the newborn a 1% solution of silver nitrate, an ophthalmic ointment containing either 1% tetracycline or 0.5% erythromycin, or another prophylactic approved by the Mayor.

(Apr. 27, 1937, 50 Stat. 120, ch. 144, § 1; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; Feb. 21, 1986, D.C. Law 6-83, § 4(a), 32 DCR 7276.)

Prior Codifications. — 1981 Ed., § 6-301. 1973 Ed., § 6-201.

Legislative history of Law 6-83. — Law 6-83, the "Preventive Health Services Amendments Act of 1985," was introduced in Council and assigned Bill No. 6-99, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on

November 5, 1985, and November 19, 1985, respectively. Signed by the Mayor on November 27, 1985, it was assigned Act No. 6-108 and transmitted to both Houses of Congress for its review.

Editor's notes. — Office of Director of Public Health abolished: See Historical and Statutory Notes following § 7-101.

§ 7-802. Report of eye inflammation; treatment.

Whenever a physician or nurse-midwife discovers that a newborn in his or her care has inflammation of the eye(s) with suppuration, he or she shall report these symptoms to the Commissioner of Public Health within 6 hours of their discovery. Upon receipt of such communication the Commissioner of Public Health, unless he finds such report to be incorrect, shall issue an order directing the parents of such child (or other person charged with its care) either to: (1) place such child in the care of a registered physician; or (2) submit immediately satisfactory proof of inability to pay for such medical service. If the Director of the Department of Human Services finds that the parents or such other person are unable to pay for such medical treatment, he shall order the parents (or such other person) to place the child in a hospital to be designated by the Department of Human Services and at the expense of said Department.

(Apr. 27, 1937, 50 Stat. 120, ch. 144, § 2; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; Feb. 21, 1986, D.C. Law 6-83, § 4(b), 32 DCR 7276.)

Prior Codifications. — 1981 Ed., § 6-302.
1973 Ed., § 6-202.

Legislative history of Law 6-83. — For legislative history of D.C. Law 6-83, see Historical and Statutory Notes following § 7-801.

Editor's notes. — Office of Director of Public Health abolished: See Historical and Statutory Notes following § 7-101.

Health Department abolished: See Historical and Statutory Notes following § 7-180.

§ 7-803. Treatment by other than registered physician.

No person other than a registered physician shall treat any case of inflammation of the eyes, attended by a discharge therefrom, of a newborn child for any period longer than may be necessary to obtain the services of a registered physician.

(Apr. 27, 1937, 50 Stat. 120, ch. 144, § 3.)

Prior Codifications. — 1981 Ed., § 6-303.

1973 Ed., § 6-203.

§ 7-804. Penalty.

Any person who willfully violates this subchapter or any rule, regulation, or order issued pursuant to this subchapter shall be guilty of a misdemeanor and, upon conviction, subject to a fine not exceeding \$1,000. Prosecution shall be in the Superior Court of the District of Columbia by information signed by the Corporation Counsel.

(Apr. 27, 1937, 50 Stat. 120, ch. 144, § 4; Feb. 21, 1986, D.C. Law 6-83, § 4(c), 32 DCR 7276.)

Prior Codifications. — 1981 Ed., § 6-304.
1973 Ed., § 6-204.

Legislative history of Law 6-83. — For

legislative history of D.C. Law 6-83, see Historical and Statutory Notes following § 7-801.

CHAPTER 8A. NEWBORN SCREENING.

| | |
|--|---|
| Sec. 7-831. Purpose. | Sec. 7-836. Committee on Metabolic Disorders — Duties. |
| 7-832. Definitions. | 7-837. Committee on Metabolic Disorders — Annual report to Mayor and Council. |
| 7-833. Neonatal testing for metabolic disorders. | 7-838. Assumption of costs by District government. |
| 7-834. Principles governing newborn screening. | 7-839. Appropriation. |
| 7-835. Committee on Metabolic Disorders — Composition; term of office; compensation; vacancies; chairperson; meetings. | 7-840. Effective date. |

§ 7-831. Purpose.

It is the purpose of this legislation to provide for the early identification of certain metabolic disorders in newborns in the District of Columbia so that referral and treatment, where appropriate, may be provided.

(Apr. 29, 1980, D.C. Law 3-65, § 2, 27 DCR 1087.)

Prior Codifications. — 1981 Ed., § 6-311.

Legislative history of Law 3-65. — Law 3-65, the “District of Columbia Newborn Screening Requirement Act of 1979,” was introduced in Council and assigned Bill No. 3-126, which was referred to the Committee on Human Resources. The Bill was adopted on first and second readings on January 22, 1980 and February 5, 1980, respectively. Signed by the

Mayor on March 4, 1980, it was assigned Act No. 3-163 and transmitted to both Houses of Congress for its review.

Delegation of Authority. — Delegation of authority pursuant to D.C. Law 3-65, the “D.C. Newborn Screening Requirement Act of 1979,” see Mayor’s Order 99-88, June 2, 1999 (46 DCR 5721).

§ 7-832. Definitions.

Unless otherwise specified the following definitions apply:

(1) The term “metabolic disorder” means a disorder which results in a defect in the function of a specific enzyme or protein.

(2) The term “hypothyroidism” means those clinical conditions which result from abnormally low circulating levels of thyroid hormone.

(3) The term “newborn” means any infant born in the District who is under 4 weeks of age.

(4) The term “phenylketonuria,” hereinafter referred to as “PKU,” means the metabolic disease of the newborn in which metabolites of phenylalanine appear in urine.

(5) The term “homocystinuria” means a condition resulting from one of several genetically determined errors of methionine metabolism.

(6) The term “galactosemia” means a condition involving the inability to convert galactose to glucose.

(7) The term “maple syrup urine disease” means a condition resulting from the impairment of branched chain alpha-ketoacid dehydrogenase.

(8) The term “sickle hemoglobinopathy” means a condition in which a mutation in the hemoglobin results in abnormally shaped red blood cells that obstruct normal circulation and cause inadequate oxygenation of the body’s tissues and vital organs. The term “sickle hemoglobinopathy” includes sickle

cell anemia (homozygous sickle cell disease), sickle cell hemoglobin C disease, and sickle cell beta thalassemia.

(9) The terms "hospital" and "maternity center" mean those terms as they are defined in § 44-501(a)(1) and (2).

(Apr. 29, 1980, D.C. Law 3-65, § 3, 27 DCR 1087; July 25, 1985, D.C. Law 6-13, § 2(a), 32 DCR 3235.)

Prior Codifications. — 1981 Ed., § 6-312.

Legislative history of Law 3-65. — For legislative history of D.C. Law 3-65, see Historical and Statutory Notes following § 7-831.

Legislative history of Law 6-13. — Law 6-13, the "District of Columbia Newborn Screening Requirement Act of 1979 Amendments Act of 1985," was introduced in Council

and assigned Bill No. 6-46, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on April 30, 1985, and May 14, 1985, respectively. Signed by the Mayor on May 30, 1985, it was assigned Act No. 6-27 and transmitted to both House of Congress for its review.

§ 7-833. Neonatal testing for metabolic disorders.

(a) Each hospital and maternity center in the District of Columbia shall make available to every newborn delivered or cared for at that hospital or maternity center blood tests to screen for galactosemia, homocystinuria, hypothyroidism, maple syrup urine disease, PKU, and sickle hemoglobinopathy. Each hospital and maternity center shall inform the parent(s) of the availability of these tests and shall, unless parental consent is withheld under § 7-834(3) or an identical test has already been performed, take appropriate blood samples for analysis by a laboratory designated pursuant to subsection (b) of this section. The Mayor may, upon the advice of the Committee on Metabolic Disorders, issue rules pursuant to subchapter I of Chapter 5 of Title 2, requiring that hospitals and maternity centers make screening tests available for additional metabolic disorders.

(b) Each test shall be forwarded to a laboratory designated by the Mayor. A designated laboratory must be one which is currently certified by the College of American Pathologists and regularly participates in the appropriate quality control program for such testing by the College or is currently certified by the United States Center for Disease Control and regularly participates in the appropriate quality control program for such testing by the Center or has a federal license under the Clinical Laboratories Improvement Act of 1967 (42 U.S.C. § 263a), which permits the laboratory to solicit and accept in interstate commerce human specimens for the purpose of performing clinical laboratory examinations, for the purpose of detecting metabolic disorders.

(c) All test results shall be forwarded to the hospital or maternity center where the blood sample was taken. In addition, all positive test results shall be forwarded to the parent(s) and a physician designated by the District of Columbia government. This physician shall assist the parent(s) and the mother's physician (if she has one) in securing follow-up testing and treatment when appropriate.

(Apr. 29, 1980, D.C. Law 3-65, § 4, 27 DCR 1087; July 25, 1985, D.C. Law 6-13, § 2(b), 32 DCR 3235.)

Section references. — This section is referred to in § 7-836.

Prior Codifications. — 1981 Ed., § 6-313.

Legislative history of Law 3-65. — For legislative history of D.C. Law 3-65, see Historical and Statutory Notes following § 7-831.

Legislative history of Law 6-13. — For legislative history of D.C. Law 6-13, see Historical and Statutory Notes following § 7-832.

Delegation of Authority. — Delegation of authority pursuant to Law 6-13, see Mayor's Order 86-36, March 3, 1986.

Delegation of authority pursuant to the "Preventive Health Services Amendment Act of 1985", see Mayor's Order 98-141, August 20, 1998 (45 DCR 6588).

Delegation of authority pursuant to Law 6-13, see Mayor's Order 86-36, March 3, 1986.

§ 7-834. Principles governing newborn screening.

The Mayor shall insure that:

(1) Carriers of metabolic disorders should not be stigmatized and should not be discriminated against by any person within the District of Columbia;

(2) District of Columbia policy regarding metabolic disorders should be made with full public knowledge, in light of expert opinion, and should be periodically reviewed to consider changing medical knowledge and ensure full public protection; and

(3) Participation of persons in metabolic disorder programs in the District of Columbia should be wholly voluntary, and that all information obtained from persons involved in metabolic disorder programs in the District of Columbia should be held strictly confidential, except as provided for in subparagraph (D) of this paragraph; and that in carrying out the mandate of this paragraph the Mayor shall further insure that:

(A) No test be performed on any newborn over the objections of his or her parent and that no test be performed unless such parent is fully informed of the purpose of testing for metabolic disorders, and is given a reasonable opportunity to object to such testing;

(B) No program requires mandatory participation, or restriction of childbearing, or be a prerequisite to eligibility for, or receipt of, any other service or assistance from or to participation in any other program;

(C) All participants in programs on metabolic disorders be protected from undue physical or mental harm, be informed of the nature of risks involved in participation in such a program or project, be informed of the nature and cost of available therapies or maintenance programs for those affected by metabolic disorders, and be informed of the possible benefits and risks of such therapies and programs; and

(D) Except for statistical data compiled without reference to the identity of any individual, all information obtained from any individual or from specimens from any newborn shall be held confidential and be considered a confidential medical record except for such information as the parent consents to be released. The parent must be informed of the scope of the information requested to be released and the purpose for releasing such information, prior to the release of any confidential information.

(Apr. 29, 1980, D.C. Law 3-65, § 5, 27 DCR 1087.)

Section references. — This section is referred to in § 7-833.

Prior Codifications. — 1981 Ed., § 6-314.

Legislative history of Law 3-65. — For legislative history of D.C. Law 3-65, see Historical and Statutory Notes following § 7-831.

Delegation of Authority. — Delegation of Authority pursuant to D.C. Law 3-65, “District of Columbia New Born Screening Requirement

Act of 1979”, see Mayor’s Order 2004-172, October 20, 2004 (51 DCR 10494).

§ 7-835. Committee on Metabolic Disorders — Composition; term of office; compensation; vacancies; chairperson; meetings.

(a) The Committee on Metabolic Disorders (hereinafter referred to as the “Committee”), shall be composed of 9 members. The members shall be appointed by the Mayor. Each member shall serve a term of 3 years or until his or her successor is appointed and qualified, except that in the initial appointments 3 members shall serve for 1 year, 3 members for 2 years and 3 members for 3 years. No member shall be appointed to more than 3 consecutive 3-year terms. The members of the Committee shall serve without compensation.

(b) Four members of the Committee shall be consumer members. A consumer is defined as a person who is not a health professional, nor involved in the administration or ownership of any health care institution or health insurance organization, nor the spouse of a health professional, administrator, or owner. Two of the consumer members shall be appointed from a list of 5 names submitted to the Mayor by the District of Columbia Association for Retarded Citizens, Inc. Five of the members of the Committee shall be nonconsumers. Four of the nonconsumer members shall be licensed physicians knowledgeable in the diagnosis and treatment of metabolic disorders. At least 1 of the physicians shall be either a geneticist or an endocrinologist. The Director of the Department of Human Services, or his or her designate, shall serve as an ex officio nonvoting member of the Committee.

(c) When a vacancy on the Committee occurs for any reason other than the normal expiration of a term of office, a member shall be promptly appointed, to complete the unexpired term of the resigning member. The replacement member shall be selected in the same manner as outlined in subsection (b) of this section.

(d) The Mayor shall appoint a Chairperson from among the members of the Committee to serve from the time of the Committee formation until December 31st of the year of the formation of the Committee. Thereafter the Mayor, each year, shall appoint a Chairperson to serve a 1-year term to run from January 1st to December 31st of each year.

(e) The full Committee shall meet at least twice each year. Business may be conducted if a majority of the members are present.

(Apr. 29, 1980, D.C. Law 3-65, § 6, 27 DCR 1087.)

Prior Codifications. — 1981 Ed., § 6-315.
Legislative history of Law 3-65. — For

legislative history of D.C. Law 3-65, see Historical and Statutory Notes following § 7-831.

§ 7-836. Committee on Metabolic Disorders — Duties.

The Committee shall:

- (1) Gather and disseminate information to further the public's understanding of metabolic disorders;
- (2) Consult the public, especially committees and groups of persons particularly affected by metabolic disorder programs;
- (3) Make available to the public information on the operation of all programs on metabolic disorders within the District of Columbia, except for confidential information;
- (4) Reevaluate on a continuing basis the need for and efficacy of newborn screening tests for galactosemia, homocystinuria, hypothyroidism, maple syrup urine disease, PKU, and sickle hemoglobinopathy;
- (5) Recommend to the Mayor any additional screening tests for metabolic disorders that should be added to those required under § 7-833(a);
- (6) Recommend to the Mayor any screening tests for metabolic disorders required under § 7-833(a) that should be deleted;
- (7) Consider the incidence of each metabolic disorder and the cost of detection and management of each metabolic disorder, and, where appropriate, consult District of Columbia and national experts concerning the medical, psychological, ethical, social and economic effects of programs for the detection and management of metabolic disorders;
- (8) Keep the Mayor informed as to new and improved techniques for screening and testing newborns for metabolic disorders; and
- (9) Recommend to the Mayor a laboratory or laboratories for designation under § 7-833(b).

(Apr. 29, 1980, D.C. Law 3-65, § 7, 27 DCR 1087; July 25, 1985, D.C. Law 6-13, § 2(c), 32 DCR 3235.)

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| <p>Prior Codifications. — 1981 Ed., § 6-316.</p> <p>Legislative history of Law 3-65. — For legislative history of D.C. Law 3-65, see Historical and Statutory Notes following § 7-831.</p> | <p>Legislative history of Law 6-13. — For legislative history of D.C. Law 6-13, see Historical and Statutory Notes following § 7-832.</p> |
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§ 7-837. Committee on Metabolic Disorders — Annual report to Mayor and Council.

The Committee shall submit to the Mayor and the Council on January 1st of each year a report summarizing the activities of the Committee, and containing any recommendations to the Mayor and the Council which the Committee deems necessary regarding problems of metabolic disorders.

(Apr. 29, 1980, D.C. Law 3-65, § 8, 27 DCR 1087.)

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| <p>Prior Codifications. — 1981 Ed., § 6-317.</p> <p>Legislative history of Law 3-65. — For</p> | <p>legislative history of D.C. Law 3-65, see Historical and Statutory Notes following § 7-831.</p> |
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§ 7-838. Assumption of costs by District government.

If a newborn's parents are indigent, the government of the District of Columbia shall pay all costs related to screening under this subchapter. If a newborn's parents are indigent and the child's residence is in the District of Columbia, the government of the District of Columbia shall pay any subse-

quent costs for follow-up testing and treatment. The Mayor shall define "indigency" under this section and may establish a sliding scale of partial payment by the District of Columbia government based on the parents' reasonable ability to pay some of the costs.

(Apr. 29, 1980, D.C. Law 3-65, § 9, 27 DCR 1087; July 25, 1985, D.C. Law 6-13, § 2(d), 32 DCR 3235.)

Prior Codifications. — 1981 Ed., § 6-318.

Legislative history of Law 3-65. — For legislative history of D.C. Law 3-65, see Historical and Statutory Notes following § 7-831.

Legislative history of Law 6-13. — For

legislative history of D.C. Law 6-13, see Historical and Statutory Notes following § 7-832.

Delegation of Authority. — Delegation of authority pursuant to Law 6-13, see Mayor's Order 86-36, March 3, 1986.

§ 7-839. Appropriation.

There is hereby authorized to be appropriated out of the general revenues of the District of Columbia government sufficient funds to carry out the requirements of this subchapter.

(Apr. 29, 1980, D.C. Law 3-65, § 10, 27 DCR 1087; July 25, 1985, D.C. Law 6-13, § 2(e), 32 DCR 3235.)

Prior Codifications. — 1981 Ed., § 6-319.

Legislative history of Law 3-65. — For legislative history of D.C. Law 3-65, see Historical and Statutory Notes following § 7-831.

Legislative history of Law 6-13. — For legislative history of D.C. Law 6-13, see Historical and Statutory Notes following § 7-832.

§ 7-840. Effective date.

This subchapter shall take effect on October 1, 1980, after a 30-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in § 1-206.02(c)(1).

(Apr. 29, 1980, D.C. Law 3-65, § 11, 27 DCR 1087.)

Prior Codifications. — 1981 Ed., § 6-320.

Emergency legislation. — For temporary authorization for the establishment of a program to provide early intervention services designed to meet the developmental needs of infants and toddlers from birth through 2 years of age and their families on a sliding fee scale to provide a system of payment for early intervention services based on the income of the family, see § 2 of the Early Intervention Services Sliding Fee Scale Establishment Emergency Act of 1994 (D.C. Act 10-320, August 4, 1994, 41 DCR 5369), § 2 of the Early Intervention Services Sliding Fee Scale Establishment Congressional Adjournment Emergency Act of 1994 (D.C. Act 10-329, October 21, 1994, 41 DCR 7160), and § 2 of the Early Intervention Services Sliding Fee Scale Establishment Congressional Adjournment Emergency Act of 1995 (D.C. Act 11-1, January 18, 1995, 42 DCR 537).

Section 3 of D.C. Act 10-320 provided that the Mayor shall issue rules to implement the provisions of the act.

Section 3 of D.C. Act 10-329 provided that the Mayor shall issue rules to implement the provisions of the act.

Section 3 of D.C. Act 11-1 provided that the Mayor shall issue rules to implement the provisions of the act.

For temporary authorization for the establishment of a program to provide early intervention services designed to meet the developmental needs of infants and toddlers from birth through 2 years of age and their families on a sliding fee scale to provide a system of payment for early intervention services based on the income of the family, see § 2 of the Early Intervention Services Sliding Fee Scale Establishment Emergency Act of 1994 (D.C. Act 10-320, August 4, 1994, 41 DCR 5369), § 2 of the

Early Intervention Services Sliding Fee Scale Establishment Congressional Adjournment Emergency Act of 1994 (D.C. Act 10-329, October 21, 1994, 41 DCR 7160), § 2 of the Early Intervention Services Sliding Fee Scale Establishment Congressional Adjournment Emergency Act of 1995 (D.C. Act 11-1, January 18, 1995, 42 DCR 537), § 2 of the Early Intervention Services Sliding Fee Scale Establishment Emergency Act of 1996 (D.C. Act 11-188, January 25, 1996, 43 DCR 395), and see § 2 of the

Early Intervention Services Sliding Fee Scale Establishment Congressional Review Emergency Act of 1997 (D.C. Act 12-41, March 31, 1997, 44 DCR 2089).

Section 3 of D.C. Act 12-41 provided that the Mayor shall issue rules to implement the provisions of the act.

Legislative history of Law 3-65. — For legislative history of D.C. Law 3-65, see Historical and Statutory Notes following § 7-831.

CHAPTER 8B. NEWBORN HEARING SCREENING.

Sec.

7-851. Definitions.

7-852. Newborn hearing screening programs.

7-853. Health benefit plan reimbursement.

Sec.

7-854. Rules.

7-855. Applicability of §§ 7-852 and 7-853.

§ 7-851. Definitions.

For the purposes of this subchapter, the term:

(1) "Health benefit plan" shall have the same meaning as provided in § 31-3301.01(20).

(2) "Health insurer" shall have the same meaning as provided in § 31-3301.01(22).

(3) "Hearing impairment" means a dysfunction of the auditory system, of any type or degree, which is sufficient to interfere with the acquisition and development of speech and language skills, with or without the use of sound amplification.

(Apr. 4, 2001, D.C. Law 13-276, § 2, 48 DCR 1865.)

Legislative history of Law 13-276. — Law 13-276, the "Newborn Hearing Screening Act of 2000", was introduced in Council and assigned Bill No. 13-474, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on Decem-

ber 5, 2000, and December 19, 2000, respectively. Signed by the Mayor on January 16, 2001, it was assigned Act No. 13-572 and transmitted to both Houses of Congress for its review. D.C. Law 13-276 became effective on April 4, 2001.

§ 7-852. Newborn hearing screening programs.

(a) Each hospital and maternity center in the District of Columbia shall establish a newborn hearing screening program to ensure that all newborns in the hospital or maternity center are screened for hearing impairment before discharge, subject to the limitations stated in subsection (d) of this section.

(b) Each test shall be conducted by an audiologist, otolaryngologist, or other qualified person, in accordance with accepted medical practices.

(c) The screening program shall consist of at least one of the following tests:

(1) Auditory brain stem response;

(2) Otoacoustic emissions; or

(3) Other appropriate nationally recognized, objective physiological screening test.

(d) Each hospital and maternity center shall inform the parent of the newborn of the availability of the hearing screening and shall perform the hearing screening unless the procedure is contrary to the parent's religious beliefs or parental consent is withheld.

(e) Each hospital and maternity center shall document a parent's consent or refusal to participate in its newborn hearing screening program.

(f) The results of the screening, and recommendations for follow-up testing and treatment when appropriate, shall be provided to the parent and the child's primary care health care provider, if known, before discharge.

(Apr. 4, 2001, D.C. Law 13-276, § 3, 48 DCR 1865.)

Legislative history of Law 13-276. — For D.C. Law 13-276, see notes following § 7-851.

Editor's notes. — Section 7(a) of D.C. Law

13-276 provided: "(a) Section 3 shall apply on the month 120 days following the effective date of this act."

§ 7-853. Health benefit plan reimbursement.

All health insurer health benefit plans shall reimburse for newborn hearing screenings conducted under this subchapter.

(Apr. 4, 2001, D.C. Law 13-276, § 4, 48 DCR 1865.)

Legislative history of Law 13-276. — For D.C. Law 13-276, see notes following § 7-851.

Editor's notes. — Section 7(b) of D.C. Law 13-276 provided: "(b) Section 4 shall apply to all

health benefit plans issued or reissued beginning on the first day of the month 120 days following the effective date of this act."

§ 7-854. Rules.

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2 shall issue rules to implement the provisions of this subchapter.

(Apr. 4, 2001, D.C. Law 13-276, § 5, 48 DCR 1865.)

Legislative history of Law 13-276. — For D.C. Law 13-276, see notes following § 7-851.

Delegation of Authority. — Delegation of Authority Pursuant to DC Law 13-276, the

"Newborn Hearing Screening Act of 2000", see Mayor's Order 2002-12, February 1, 2002 (49 DCR 929).

§ 7-855. Applicability of §§ 7-852 and 7-853.

(a) Section 7-852 shall apply on the first day of the month 120 days following April 4, 2001.

(b) Section 7-853 shall apply to all health benefit plans issued or reissued beginning on the first day of the month 120 days following April 4, 2001.

(Apr. 4, 2001, D.C. Law 13-276, § 6, 48 DCR 1865.)

Legislative history of Law 13-276. — For D.C. Law 13-276, see notes following § 7-851.

CHAPTER 8C. EARLY INTERVENTION FOR CHILDREN.

Subchapter I. Early Intervention; 1995

Sec.

7-861, 7-862. [Repealed].

Subchapter II. Early Intervention, 2005

7-863.01. Short title.

7-863.02. Purpose.

Sec.

7-863.03. Establishment of Early Intervention Program and Interagency Coordinating Council.

7-863.03a. Transfer from Department of Human Services; continuation.

7-863.04. Rules.

Subchapter I. Early Intervention; 1995.

§ 7-861. Program establishment. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-172, § 2, 43 DCR 4491; Mar. 2, 2007, D.C. Law 16-191, § 33, 54 DCR 6794.)

Prior Codifications. — 1981 Ed., § 6-331.

Temporary Addition of Section. — For temporary (225 day) addition, see § 2 of Early Intervention Services Sliding Fee Scale Establishment Temporary Act of 1994 (D.C. Law 10-199, March 14, 1995, law notification 42 DCR 1516).

For temporary (225 day) addition, see § 2 of Early Intervention Services Sliding Fee Scale Establishment Temporary Act of 1996 (D.C. Law 11-132, May 29, 1996, law notification 43 DCR 3360).

Emergency legislation. — For temporary addition of subchapter, see §§ 2 and 3 of the Early Intervention Services Sliding Fee Scale Establishment Emergency Act of 1994 (D.C. Act 10-320, August 4, 1994, 41 DCR 5369), §§ 2 and 3 of the Early Intervention Services Sliding Fee Scale Establishment Congressional Adjournment Emergency Act of 1994 (D.C. Act 10-329, October 21, 1994, 41 DCR 7160), §§ 2 and 3 of the Early Intervention Services Sliding Fee Scale Establishment Congressional Adjournment Emergency Act of 1995 (D.C. Act 11-1, January 18, 1995, 42 DCR 537), §§ 2 and 3 of the Early Intervention Services Sliding Fee Scale Establishment Emergency Act of 1996 (D.C. Act 11-188, January 25, 1996, 43 DCR 395), §§ 2 and 3 of the Early Intervention Services Sliding Fee Scale Establishment Congressional Review Emergency Act of 1996 (D.C. Act 11-245, April 11, 1996, 43 DCR 2121), and

§§ 2 and 3 of the Early Intervention Services Sliding Fee Scale Establishment Second Congressional Review Emergency Act of 1996 (D.C. Act 11-484, January 2, 1997, 44 DCR 628).

For temporary (90 day) addition of subchapter, see §§ 502 to 504 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2002 (D.C. Act 14-310, March 26, 2002, 49 DCR 3420).

Legislative history of Law 11-172. — Law 11-172, the “Early Intervention Services Sliding Fee Scale Establishment Act of 1996,” was introduced in Council and assigned Bill No. 11-608, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 4, 1996, and July 3, 1996, respectively. Signed by the Mayor on July 19, 1996, it was assigned Act No. 11-320 and transmitted to both Houses of Congress for its review. D.C. Law 11-172 became effective on April 9, 1997.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 7-103.

Delegation of Authority. — Delegation of authority pursuant to D.C. Law 11-172, the “Early Intervention Services Sliding Fee Scale Establishment Act of 1996,” see Mayor’s Order 97-110, June 18, 1997 (44 DCR 4128).

Delegation of Rulemaking Authority to the Director of the Child and Family Services Agency under the Newborn Safe Haven Temporary Act of 2009, see Mayor’s Order 2009-146, September 1, 2009 (56 DCR 7517).

§ 7-862. Rules. [Repealed].

Repealed.

(Apr. 9 1997, D.C. Law 11-172, § 3, 43 DCR 4491; Mar. 2, 2007, D.C. Law 16-191, § 33, 54 DCR 6794.)

Prior Codifications. — 1981 Ed., § 6-332.
Temporary Addition of Section. — For temporary (225 day) addition, see § 3 of Early Intervention Services Sliding Fee Scale Establishment Temporary Act of 1994 (D.C. Law 10-199, March 14, 1995, law notification 42 DCR 1516).

For temporary (225 day) addition, see § 3 of Early Intervention Services Sliding Fee Scale Establishment Temporary Act of 1996 (D.C. Law 11-132, May 29, 1996, law notification 43 DCR 3360).

Emergency legislation. — For temporary addition of subchapter, see note to § 7-861.

For temporary (90 day) addition of subchapter, see §§ 502 to 504 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2002 (D.C. Act 14-310, March 26, 2002, 49 DCR 3420).

Legislative history of Law 11-172. — For legislative history of D.C. Law 11-172, see Historical and Statutory Notes following § 7-861.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 7-103.

Subchapter II. Early Intervention, 2005.

§ 7-863.01. Short title.

This subchapter may be cited as the “Early Intervention Program Establishment Act of 2004”.

(Apr. 13, 2005, D.C. Law 15-353, § 501, 52 DCR 2331.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 501 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2002 (D.C. Law 14-164, June 25, 2002, law notification 49 DCR 6500).

For temporary (225 day) addition, see § 501 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2003 (D.C. Law 15-2, May 3, 2003, law notification 50 DCR 3782).

For temporary (225 day) addition, see § 501 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2004 (D.C. Law 15-117, March 30, 2004, law notification 51 DCR 3804).

For temporary (225 day) addition, see § 501 of the Child and Youth, Safety and Health Omnibus Second Temporary Amendment Act of 2004 (D.C. Law 15-319, April 8, 2005, law notification 52 DCR 4708).

Emergency legislation. — For temporary (90 day) addition, see § 501 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2003 (D.C. Act 15-3, January 22, 2003, 50 DCR 1426).

For temporary (90 day) addition, see § 501 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-71, April 16, 2003, 50 DCR 3593).

For temporary (90 day) addition, see § 501 of

Child and Youth, Safety and Health Omnibus Second Emergency Amendment Act of 2003 (D.C. Act 15-279, December 18, 2003, 51 DCR 60).

For temporary (90 day) addition, see § 501 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-407, March 18, 2004, 51 DCR 3659).

For temporary (90 day) addition, see § 501 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2004 (D.C. Act 15-630, November 30, 2004, 52 DCR 1143).

For temporary (90 day) addition, see § 501 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-30, February 17, 2005, 52 DCR 2993).

Legislative history of Law 15-353. — Law 15-353, the “Child and Youth, Safety and Health Omnibus Amendment Act of 2004”, was introduced in Council and assigned Bill No. 15-607 which was referred to the Committees on Human Services, Finance and Revenue, and Education, Libraries and Recreation. The Bill was adopted on first and second readings on December 7, 2004, and December 21, 2004, respectively. Signed by the Mayor on January 19, 2005, it was assigned Act No. 15-759 and transmitted to both Houses of Congress for its review. D.C. Law 15-353 became effective on April 13, 2005.

§ 7-863.02. Purpose.

The purpose of this subchapter is:

- (1) To enhance the development of infants and toddlers with disabilities and to minimize their potential for developmental delay;
- (2) To reduce the educational costs to our society, including our schools, by minimizing the need for special education and related services after infants and toddlers with disabilities reach school age;
- (3) To minimize the likelihood for institutionalization of individuals with disabilities and maximize the potential for their independent living in society;
- (4) To enhance the capacity of families to meet the special needs of their infants and toddlers with disabilities;
- (5) To establish collaborative activities among agencies of the District of Columbia that administer programs relating to young children to maximize the quality of early intervention services; and
- (6) To enhance the capacity of city agencies and service providers to identify, evaluate, and meet the special needs of historically under-represented populations, particularly minorities and low-income and inner-city populations.

(Apr. 13, 2005, D.C. Law 15-353, § 502, 52 DCR 2331.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 502 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2002 (D.C. Law 14-164, June 25, 2002, law notification 49 DCR 6500).

For temporary (225 day) addition, see § 502 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2003 (D.C. Law 15-2, May 3, 2003, law notification 50 DCR 3782).

For temporary (225 day) addition, see § 502 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2004 (D.C. Law 15-117, March 30, 2004, law notification 51 DCR 3804).

For temporary (225 day) addition, see § 502 of the Child and Youth, Safety and Health Omnibus Second Temporary Amendment Act of 2004 (D.C. Law 15-319, April 8, 2005, law notification 52 DCR 4708).

Emergency legislation. — For temporary (90 day) addition, see § 502 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2003 (D.C. Act 15-3, January 22, 2003, 50 DCR 1426).

For temporary (90 day) addition, see § 502 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-71, April 16, 2003, 50 DCR 3593).

For temporary (90 day) addition, see § 502 of Child and Youth, Safety and Health Omnibus Second Emergency Amendment Act of 2003 (D.C. Act 15-279, December 18, 2003, 51 DCR 60).

For temporary (90 day) addition, see § 502 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-407, March 18, 2004, 51 DCR 3659).

For temporary (90 day) addition, see § 502 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2004 (D.C. Act 15-630, November 30, 2004, 52 DCR 1143).

For temporary (90 day) addition, see § 502 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-30, February 17, 2005, 52 DCR 2993).

Legislative history of Law 15-353. — For Law 15-353, see notes following § 7-863.01.

§ 7-863.03. Establishment of Early Intervention Program and Interagency Coordinating Council.

(a) There is established in the District of Columbia an Early Intervention Program ("Program") to provide early intervention services to infants and toddlers, from birth through 2 years of age, and their families. The program shall be administered by the Office of the State Superintendent of Education. The services shall be provided in accordance with the requirements of the

Individuals with Disabilities Education Act, approved June 4, 1997 (111 Stat. 37; 20 U.S.C. § 1400 et seq.).

(b) There is established an Interagency Coordinating Council to advise and assist the Mayor with the implementation of the Program, including the establishment of interagency agreements.

(c) Early intervention services shall not be required under this subchapter, if a minor's parent or guardian submits in good faith a written notarized statement to the appropriate official affirming the intervention in question would violate the established tenets and practices of the parent's or guardian's church or religious denomination.

(Apr. 13, 2005, D.C. Law 15-353, § 503, 52 DCR 2331; June 12, 2007, D.C. Law 17-9, § 304(a), 54 DCR 4102; Mar. 25, 2009, D.C. Law 17-353, § 203(a), 56 DCR 1117.)

Effect of amendments. — D.C. Law 17-9, in subsec. (a), substituted “families, which shall be an office of and administered by the Office of the State Superintendent of Education” for “families. The Program will be administered and supervised by a lead agency designated by the Mayor”.

D.C. Law 17-353, in subsec. (a), substituted “families. The program shall be” for “families, which shall be an office of and”.

Temporary Addition of Section. — For temporary (225 day) addition, see § 503 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2002 (D.C. Law 14-164, June 25, 2002, law notification 49 DCR 6500).

For temporary (225 day) addition, see § 503 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2003 (D.C. Law 15-2, May 3, 2003, law notification 50 DCR 3782).

For temporary (225 day) addition, see § 503 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2004 (D.C. Law 15-117, March 30, 2004, law notification 51 DCR 3804).

For temporary (225 day) addition, see § 503 of the Child and Youth, Safety and Health Omnibus Second Temporary Amendment Act of 2004 (D.C. Law 15-319, April 8, 2005, law notification 52 DCR 4708).

Emergency legislation. — For temporary (90 day) addition, see § 503 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2003 (D.C. Act 15-3, January 22, 2003, 50 DCR 1426).

For temporary (90 day) addition, see § 503 of Child and Youth, Safety and Health Omnibus

Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-71, April 16, 2003, 50 DCR 3593).

For temporary (90 day) addition, see § 503 of Child and Youth, Safety and Health Omnibus Second Emergency Amendment Act of 2003 (D.C. Act 15-279, December 18, 2003, 51 DCR 60).

For temporary (90 day) addition, see § 503 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-407, March 18, 2004, 51 DCR 3659).

For temporary (90 day) addition, see § 503 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2004 (D.C. Act 15-630, November 30, 2004, 52 DCR 1143).

For temporary (90 day) addition, see § 503 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-30, February 17, 2005, 52 DCR 2993).

Legislative history of Law 15-353. — For Law 15-353, see notes following § 7-863.01.

Legislative history of Law 17-9. — Law 17-9, the “Public Education Reform Amendment Act of 2007”, was introduced in Council and assigned Bill No. 17-1, which was referred to Committee of the Whole. The Bill was adopted on first and second readings on April 3, 2007, and April 19, 2007, respectively. Signed by the Mayor on April 23, 2007, it was assigned Act No. 17-38 and transmitted to both Houses of Congress for its review. D.C. Law 17-9 became effective on June 12, 2007.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 7-161.

§ 7-863.03a. Transfer from Department of Human Services; continuation.

(a) All positions, personnel, property, records, and unexpended balances of

appropriations, allocations, and other funds available or to be made available to the Department of Human Services that support functions related to the responsibilities of the Early Care and Education Administration and the Early Intervention Program and all of the powers, duties, and functions delegated to the Department of Human Services concerning the establishment, development, and institution of functions related to the Early Care and Education Administration and the Early Intervention Program are transferred to the Office of the State Superintendent of Education, established by § 38-2601. The transfer shall be implemented in accordance with the transition plan required by § 38-2605.01.

(b) All rules, orders, obligations, determinations, grants, contracts, licenses, and agreements of the Board of Education, the District of Columbia Public Schools, the Department of Human Services, or the University of the District of Columbia relating to functions transferred to the Office of the State Superintendent of Education under subsection (a) of this section shall remain in effect according to their terms until lawfully amended, repealed, or modified.

(Apr. 13, 2005, D.C. Law 15-353, § 503a, as added June 12, 2007, D.C. Law 17-9, § 304(b), 54 DCR 4102; July 18, 2008, D.C. Law 17-202, § 602, 55 DCR 6297.)

Effect of amendments. — D.C. Law 17-202 substituted “institution of functions related to the Early Care and Education Administration and the Early Intervention Program” for “institution of functions related to the Early Intervention Program”.

Legislative history of Law 17-9. — For Law 17-9, see notes following § 7-863.03.

Legislative history of Law 17-202. — Law 17-202 the “Pre-K Enhancement and Expan-

sion Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-537 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 1, 2008, and May 6, 2008, respectively. Signed by the Mayor on May 23, 2008, it was assigned Act No. 17-399 and transmitted to both Houses of Congress for its review. D.C. Law 17-202 became effective on July 18, 2008.

§ 7-863.04. Rules.

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, may issue rules to implement the provisions of this subchapter.

(Apr. 13, 2005, D.C. Law 15-353, § 504, 52 DCR 2331.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 504 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2002 (D.C. Law 14-164, June 25, 2002, law notification 49 DCR 6500).

For temporary (225 day) addition, see § 504 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2003 (D.C. Law 15-2, May 3, 2003, law notification 50 DCR 3782).

For temporary (225 day) addition, see § 504 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2004 (D.C. Law 15-117, March 30, 2004, law notification 51 DCR 3804).

For temporary (225 day) addition, see § 504

of the Child and Youth, Safety and Health Omnibus Second Temporary Amendment Act of 2004 (D.C. Law 15-319, April 8, 2005, law notification 52 DCR 4708).

Emergency legislation. — For temporary (90 day) addition, see § 504 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2003 (D.C. Act 15-3, January 22, 2003, 50 DCR 1426).

For temporary (90 day) addition, see § 504 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-71, April 16, 2003, 50 DCR 3593).

For temporary (90 day) addition, see § 504 of Child and Youth, Safety and Health Omnibus Second Emergency Amendment Act of 2003

(D.C. Act 15-279, December 18, 2003, 51 DCR 60).

For temporary (90 day) addition, see § 504 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-407, March 18, 2004, 51 DCR 3659).

For temporary (90 day) addition, see § 504 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2004 (D.C. Act 15-630, November 30, 2004, 52 DCR 1143).

For temporary (90 day) addition, see § 504 of

Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-30, February 17, 2005, 52 DCR 2993).

Legislative history of Law 15-353. — For Law 15-353, see notes following § 7-863.01.

Delegation of Authority. — Delegation of Authority pursuant to Section 504 of the Early Intervention Program Establishment Act of 2004, D.C. Law 15-353, as amended, see Mayor's Order 2009-167, September 28, 2009 (56 DCR 8100).

CHAPTER 8D. CHILDHOOD LEAD POISONING SCREENING AND REPORTING.

| Sec. | Sec. |
|--|------------------------|
| 7-871.01. Short title. | 7-871.04. Enforcement. |
| 7-871.02. Definitions. | 7-871.05. Penalties. |
| 7-871.03. Childhood lead screening and reporting requirements. | 7-871.06. Rules. |

§ 7-871.01. Short title.

This chapter may be cited as the “Childhood Lead Poisoning Screening and Reporting Act of 2002”.

(Oct. 1, 2002, D.C. Law 14-190, § 2001, 49 DCR 6968.)

Prior Codifications. — 2001 Ed., § 7-1031.

For temporary (90 day) addition of sections, see §§ 2 to 6 of Childhood Lead Poisoning Screening and Reporting Emergency Act of 2002 (D.C. Act 14-379, June 3, 2002, 49 DCR 5301).

For temporary (90 day) addition of sections, see §§ 2 to 6 of Childhood Lead Poisoning Screening and Reporting Legislative Review Emergency Act of 2002 (D.C. Act 14-417, July 17, 2002, 49 DCR 7387).

Legislative history of Law 14-190. — Law

14-190, the “Fiscal Year 2003 Budget Support Act of 2002”, was introduced in Council and assigned Bill No. 14-609, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 7, 2002, and June 4, 2002, respectively. Signed by the Mayor on July 3, 2002, it was assigned Act No. 14-403 and transmitted to both Houses of Congress for its review. D.C. Law 14-190 became effective on October 1, 2002.

§ 7-871.02. Definitions.

For the purposes of this chapter, the term:

(1) “Child” or “Children” means an individual or individuals under the age of 6 years.

(2) “Elevated blood lead level” means an excessive absorption of lead concentration in whole blood of 10 mg/dL (micrograms of lead per deciliter) or greater.

(3) “Health care facility” means any institution providing individual care or treatment of diseases or other medical, physiological, or psychological conditions, including, but not limited to, hospitals, clinics, laboratories, nursing homes, or homes for the aged or chronically ill, but excluding private medical offices.

(4) “Health care provider” means a physician, clinic, hospital, or neighborhood health center, licensed by the District of Columbia, that is responsible for providing primary care and coordinating referrals, when necessary, to other health care providers.

(5) “Lead-poisoned child” means a child with a confirmed blood lead level equal to or greater than 15 micrograms of lead per deciliter of blood, or such other lower threshold as the United States Centers for Disease Control and Prevention may establish.

(6) “Person” means an individual, a corporation, a partnership, firm, conservator, receiver, trustee, executor, or legal representative.

(Oct. 1, 2002, D.C. Law 14-190, § 2002, 49 DCR 6968.)

Prior Codifications. — 2001 Ed., § 7-1032.

Legislative history of Law 14-190. — For Law 14-190, see notes following § 7-871.01.

§ 7-871.03. Childhood lead screening and reporting requirements.

(a) Each health care provider or facility shall inform the parent or guardian of every child under the age of 6 years in the District of Columbia, served by the provider or facility, of the requirement for periodic blood tests for lead poisoning as provided in this chapter and rules implementing this chapter.

(b) A health care provider or facility shall, unless parental consent is withheld or an identical test has already been performed within the last 12 months, perform a blood test for lead poisoning on every child who resides in the District of Columbia as part of a well-child care visit, once between ages 6 months and 14 months, and a second time between ages 22 months and 26 months. If a child's age exceeds 26 months, and a blood lead screening has not been performed, the child shall be screened twice prior to the age of 6 years.

(c) The laboratory that performed the tests pursuant to subsection (b) of this section shall forward all test results to the health care provider or facility where the blood sample was taken, and to the Mayor.

(d) The health care provider or facility shall forward all elevated blood lead level results immediately to the child's parent or guardian. Upon request of the child's parent or guardian, the health care provider or facility shall provide written evidence of testing for lead poisoning that includes the date of the test and the test results.

(e) The Mayor, pursuant to § 7-871.06, shall issue rules governing the conditions under which a health care provider or facility shall administer additional lead screening tests exceeding the requirements of subsection (b) of this section, and the process for reporting lead screening results.

(f) Any agreement or contract entered into by the Medical Assistance Administration to provide its services through a health insuring or a managed care organization shall include a requirement for the organization to provide screening and reporting services pursuant to the provisions of this section and the rules implementing this section, or to provide reimbursement for those services.

(1) The agreement or contract shall explicitly include the provision of medical case management and other follow-up treatment of a Medicaid-enrolled, lead-exposed child as may be required to protect the child's health, or reimbursement for that management and treatment.

(2) The Medical Assistance Administration shall provide for coverage and reimbursement of an environmental investigation and source control measures necessary to eliminate any lead-based paint hazard to which a Medicaid-enrolled, lead-poisoned child is exposed in the child's home environment, including, but not limited to, paint stabilization and cleanup of any dust-lead hazard.

(g) The Mayor shall issue an annual report to the Council summarizing and analyzing the lead screening results obtained pursuant to this chapter. The report shall include recommendations based on or pertaining at a minimum to:

- (1) The extent of compliance with the requirements of this section; and
- (2) The incidence and prevalence rates of childhood lead poisoning in the District of Columbia.

(Oct. 1, 2002, D.C. Law 14-190, § 2003, 49 DCR 6968; Mar. 14, 2007, D.C. Law 16-265, § 2, 54 DCR 827; Mar. 25, 2009, D.C. Law 17-353, § 159, 56 DCR 1117.)

Prior Codifications. — 2001 Ed., § 7-1033.

Effect of amendments. — D.C. Law 16-265, in subsec. (b), substituted “between 6 months and 14 months” for “between 6 months and 9 months”.

D.C. Law 17-353 validated a previously made technical correction in subsec. (b).

Legislative history of Law 14-190. — For Law 14-190, see notes following § 7-871.01.

Legislative history of Law 16-265. — Law 16-265, the “Childhood Lead Screening Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-413, which was referred to Committee on Human Services. The Bill was adopted on first and second readings

on December 5, 2006, and December 19, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-621 and transmitted to both Houses of Congress for its review. D.C. Law 16-265 became effective on March 14, 2007.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 7-161.

Delegation of Authority. — Delegation of Authority pursuant to D.C. Law 14-190, the ‘Fiscal Year 2003 Budget Support Act of 2002’, Title XX, the ‘Childhood Lead Poisoning Screening and Reporting Act of 2002’, see Mayor’s Order 2005-23, January 25, 2005 (52 DCR 2843).

§ 7-871.04. Enforcement.

(a) If the Mayor has reason to believe that there has been a violation of this chapter or of the regulations issued pursuant to this chapter, the Mayor may:

(1) Give written notice of the alleged violation, which shall include the provision of the law or regulation alleged to be violated, the facts alleged to constitute a violation, and an order that necessary corrective action be taken within a specified time set forth in the notice; or

(2) Impose civil or criminal fines and penalties in accordance with § 7-871.05.

(b) Any party adversely affected by an action taken pursuant to subsection (a) of this section is entitled to a hearing before the Mayor upon filing with the Mayor, within 15 days from the date of the action, a written request for a hearing. The hearing shall be held in accordance with the requirements of subchapter I of Chapter 5 of Title 2.

(Oct. 1, 2002, D.C. Law 14-190, § 2004, 49 DCR 6968.)

Prior Codifications. — 2001 Ed., § 7-1034.

Legislative history of Law 14-190. — For Law 14-190, see notes following § 7-871.01.

§ 7-871.05. Penalties.

(a) Any person who fails to comply with any of the provisions of this chapter shall be subject to a fine not to exceed \$5,000 for each violation. Each and every day of the violation shall constitute a separate violation and the penalties prescribed shall be applicable to each separate violation unless otherwise indicated.

(b) Civil fines, penalties, and fees may be imposed as alternative sanctions

for any infraction of the provisions of this chapter or the rules issued under authority of this chapter pursuant to Chapter 18 of Title 2.

(c) Any person who knowingly or willfully violates this chapter shall, in addition to or in lieu of any civil penalty which may be imposed for the violation, be subject, upon conviction, to a fine of not more than \$5,000 for each day of violation, or to imprisonment of not more than one year, or both.

(Oct. 1, 2002, D.C. Law 14-190, § 2005, 49 DCR 6968.)

Prior Codifications. — 2001 Ed., § 7-1035.

Legislative history of Law 14-190. — For Law 14-190, see notes following § 7-871.06.

§ 7-871.06. Rules.

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, shall issue rules to implement the provisions of this chapter. The Mayor is authorized to adopt, in whole or in part, guidelines issued by the Centers for Disease Control and Prevention and may consider such other materials relating to lead poisoning prevention, testing, and treatment, as deemed appropriate.

(Oct. 1, 2002, D.C. Law 14-190, § 2006, 49 DCR 6968.)

Prior Codifications. — 2001 Ed., § 7-1036.

Legislative history of Law 14-190. — For Law 14-190, see notes following § 7-871.01.

CHAPTER 8E. UNIFORM CHILD HEALTH SCREENING REQUIREMENTS.

| | |
|--|--|
| Sec. | Sec. |
| 7-875.01. Purpose. | 7-875.04. Payment for health screenings. |
| 7-875.02. Definitions. | 7-875.05. Rules. |
| 7-875.03. Establishment of uniform health screening requirements and health assessment enrollment forms. | 7-875.06. Applicability. |

§ 7-875.01. Purpose.

The purpose of this chapter is:

(1) To establish age-appropriate health screening requirements for all children, from birth to 21 years of age, in the District of Columbia, regardless of their insurance status, who:

(A) Reside in the District;

(B) Are wards of the District; or

(C) Are children with special needs who reside or are receiving services in another state;

(2) To improve the overall health status of all children by ensuring consistency in health screening and early detection of health problems and enabling children to obtain the necessary prevention, treatment, and intervention services at the earliest opportunity;

(3) To reduce parental stress and increase parental satisfaction and compliance with all child-related health, human or social services, and educational programs by using a uniform health assessment form; and

(4) To provide the Mayor with the information necessary to effectively plan, establish, and evaluate a comprehensive system of appropriate preventive services for children for early detection of potential health problems.

(Apr. 13, 2005, D.C. Law 15-353, § 302, 52 DCR 2331.)

Temporary Addition of Section. — For temporary (225 day) additions, see §§ 301, 302 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2002 (D.C. Law 14-164, June 25, 2002, law notification 49 DCR 6500).

For temporary (225 day) additions, see §§ 301, 302 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2003 (D.C. Law 15-2, May 3, 2003, law notification 50 DCR 3782).

For temporary (225 day) additions, see §§ 301, 302 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2004 (D.C. Law 15-117, March 30, 2004, law notification 51 DCR 3804).

For temporary (225 day) additions, see §§ 301, 302 of the Child and Youth, Safety and Health Omnibus Second Temporary Amendment Act of 2004 (D.C. Law 15-319, April 8, 2005, law notification 52 DCR 4708).

Emergency legislation. — For temporary (90 day) additions, see §§ 301 and 302 of Child

and Youth, Safety and Health Omnibus Emergency Amendment Act of 2002 (D.C. Act 14-310, March 26, 2002, 49 DCR 3420).

For temporary (90 day) additions, see §§ 301 and 302 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2003 (D.C. Act 15-3, January 22, 2003, 50 DCR 1426).

For temporary (90 day) additions, see §§ 301 and 302 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-71, April 16, 2003, 50 DCR 3593).

For temporary (90 day) additions, see §§ 301 and 302 of Child and Youth, Safety and Health Omnibus Second Emergency Amendment Act of 2003 (D.C. Act 15-279, December 18, 2003, 51 DCR 60).

For temporary (90 day) additions, see §§ 301 and 302 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-407, March 18, 2004, 51 DCR 3659).

For temporary (90 day) additions, see §§ 301 and 302 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2004 (D.C. Act 15-630, November 30, 2004, 52 DCR 1143).

For temporary (90 day) additions, see §§ 301 and 302 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-30, February 17, 2005, 52 DCR 2993).

Legislative history of Law 15-353. — Law 15-353, the “Child and Youth, Safety and

Health Omnibus Amendment Act of 2004”, was introduced in Council and assigned Bill No. 15-607 which was referred to the Committees on Human Services, Finance and Revenue, and Education, Libraries and Recreation. The Bill was adopted on first and second readings on December 7, 2004, and December 21, 2004, respectively. Signed by the Mayor on January 19, 2005, it was assigned Act No. 15-759 and transmitted to both Houses of Congress for its review. D.C. Law 15-353 became effective on April 13, 2005.

§ 7-875.02. Definitions.

For the purposes of this chapter, the term:

(1) “Child-related educational program” means public and private schools, including pre-kindergarten, Head Start, child care, and special education.

(2) “Child-related health program” means Medicaid, Children Health Insurance Program (“CHIP”), Healthy Start, Healthy Families, Early Intervention, and private health insurance.

(3) “Child-related human or social services program” means children in foster care and Women, Infants and Children.

(4) “Children with special needs who reside or are receiving care in another state” means children:

(A) With physical or mental disabilities or illnesses who reside or receive care in other states, because the District does not have the facilities, resources, or services to appropriately treat the child’s physical or mental disability or illness; and

(B) Whose parents or legal guardians reside in the District;

(5) “Health benefits plan” means any accident and health insurance policy or certificate, hospital and medical services corporation contract, health maintenance organization subscriber contract, plan provided by a multiple employer welfare arrangement, or plan provided by another benefit arrangement. The term “health benefit plan” does not mean accident only, credit, or disability insurance; coverage of Medicare services or federal employee health plans pursuant to contracts with the United States government; Medicare supplemental or long-term care insurance; dental only or vision only insurance; specified disease insurance; hospital confinement indemnity coverage; limited benefit health coverage; coverage issued as a supplement to liability insurance, insurance arising out of a workers’ compensation or similar law; automobile medical payment insurance; medical expense and loss of income benefits; or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(6) “Health insurer” means any person that provides one or more health benefit plans or insurance in the District of Columbia, including an insurer, a hospital and medical services corporation, a fraternal benefit society, a health maintenance organization, a multiple employer welfare arrangement, or any other person providing a plan of health insurance subject to the authority of the Commissioner.

(7) “Uniform health form” means a standardized health assessment form developed by the Mayor for use when enrolling a child in child-related educational, health, and human or social services programs.

(Apr. 13, 2005, D.C. Law 15-353, § 303, 52 DCR 2331.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 303 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2002 (D.C. Law 14-164, June 25, 2002, law notification 49 DCR 6500).

For temporary (225 day) addition, see § 303 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2003 (D.C. Law 15-2, May 3, 2003, law notification 50 DCR 3782).

For temporary (225 day) addition, see § 303 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2004 (D.C. Law 15-117, March 30, 2004, law notification 51 DCR 3804).

For temporary (225 day) addition, see § 303 of the Child and Youth, Safety and Health Omnibus Second Temporary Amendment Act of 2004 (D.C. Law 15-319, April 8, 2005, law notification 52 DCR 4708).

Emergency legislation. — For temporary (90 day) addition, see § 303 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2002 (D.C. Act 14-310, March 26, 2002, 49 DCR 3420).

For temporary (90 day) addition, see § 303 of Child and Youth, Safety and Health Omnibus

Emergency Amendment Act of 2003 (D.C. Act 15-3, January 22, 2003, 50 DCR 1426).

For temporary (90 day) addition, see § 303 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-71, April 16, 2003, 50 DCR 3593).

For temporary (90 day) addition, see § 303 of Child and Youth, Safety and Health Omnibus Second Emergency Amendment Act of 2003 (D.C. Act 15-279, December 18, 2003, 51 DCR 60).

For temporary (90 day) addition, see § 303 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-407, March 18, 2004, 51 DCR 3659).

For temporary (90 day) addition, see § 303 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2004 (D.C. Act 15-630, November 30, 2004, 52 DCR 1143).

For temporary (90 day) addition, see § 303 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-30, February 17, 2005, 52 DCR 2993).

Legislative history of Law 15-353. — For Law 15-353, see notes following § 7-875.01.

§ 7-875.03. Establishment of uniform health screening requirements and health assessment enrollment forms.

(a) The Mayor shall establish uniform, age-appropriate health screening requirements consistent with the standards and schedules of the American Academy of Pediatrics for all children, from birth to 21 years of age, in the District of Columbia, regardless of insurance status who are:

- (1) Residents of the District;
- (2) Wards of the District; or

(3) Children with special needs who reside in or who are receiving services in another state.

(b) The Mayor shall develop a uniform health assessment form for enrollment of children in child-related health, human or social services, and educational programs. Use of the form is not intended to supersede the enrollment requirements of child-related health, educational, and human or social services programs. The form may be supplemented by additional forms used for enrollment that are not related to health assessment.

(c) Uniform health screenings shall not be required under this chapter, if a minor’s parent or guardian or an adult youth submits in good faith a written

notarized statement to the appropriate official affirming that the screening in question would violate the established tenets and practices of the parent's or guardian's church or religious denomination, or in the case of an adult youth, the adult youth's church or religious denomination.

(Apr. 13, 2005, D.C. Law 15-353, § 304, 52 DCR 2331.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 304 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2002 (D.C. Law 14-164, June 25, 2002, law notification 49 DCR 6500).

For temporary (225 day) addition, see § 304 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2003 (D.C. Law 15-2, May 3, 2003, law notification 50 DCR 3782).

For temporary (225 day) addition, see § 304 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2004 (D.C. Law 15-117, March 30, 2004, law notification 51 DCR 3804).

For temporary (225 day) addition, see § 304 of the Child and Youth, Safety and Health Omnibus Second Temporary Amendment Act of 2004 (D.C. Law 15-319, April 8, 2005, law notification 52 DCR 4708).

Emergency legislation. — For temporary (90 day) addition, see § 304 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2002 (D.C. Act 14-310, March 26, 2002, 49 DCR 3420).

For temporary (90 day) addition, see § 304 of Child and Youth, Safety and Health Omnibus

Emergency Amendment Act of 2003 (D.C. Act 15-3, January 22, 2003, 50 DCR 1426).

For temporary (90 day) addition, see § 304 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-71, April 16, 2003, 50 DCR 3593).

For temporary (90 day) addition, see § 304 of Child and Youth, Safety and Health Omnibus Second Emergency Amendment Act of 2003 (D.C. Act 15-279, December 18, 2003, 51 DCR 60).

For temporary (90 day) addition, see § 304 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-407, March 18, 2004, 51 DCR 3659).

For temporary (90 day) addition, see § 304 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2004 (D.C. Act 15-630, November 30, 2004, 52 DCR 1143).

For temporary (90 day) addition, see § 304 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-30, February 17, 2005, 52 DCR 2993).

Legislative history of Law 15-353. — For Law 15-353, see notes following § 7-875.01.

§ 7-875.04. Payment for health screenings.

(a) A health insurer's health benefits plan shall include the uniform, age-appropriate health screening requirements for children from birth to age 21 years who are:

(1) Residents of the District;

(2) Wards of the District; or

(3) Children with special needs who reside or are receiving services in another state.

(b) The enrollments for Medicaid, Head Start, Healthy Families, and CHIP are expanded to include the requirement of uniform, age-appropriate health screenings for all children.

(Apr. 13, 2005, D.C. Law 15-353, § 305, 52 DCR 2331.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 305 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2002 (D.C. Law 14-164, June 25, 2002, law notification 49 DCR 6500).

For temporary (225 day) addition, see § 305 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2003 (D.C. Law 15-2, May 3, 2003, law notification 50 DCR 3782).

For temporary (225 day) addition, see § 305

of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2004 (D.C. Law 15-117, March 30, 2004, law notification 51 DCR 3804).

For temporary (225 day) addition, see § 305 of the Child and Youth, Safety and Health Omnibus Second Temporary Amendment Act of 2004 (D.C. Law 15-319, April 8, 2005, law notification 52 DCR 4708).

Emergency legislation. — For temporary (90 day) addition, see § 305 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2002 (D.C. Act 14-310, March 26, 2002, 49 DCR 3420).

For temporary (90 day) addition, see § 305 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2003 (D.C. Act 15-3, January 22, 2003, 50 DCR 1426).

For temporary (90 day) addition, see § 305 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-71, April 16, 2003, 50 DCR 3593).

§ 7-875.05. Rules.

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, shall issue rules to implement the provisions of this chapter.

(Apr. 13, 2005, D.C. Law 15-353, § 306, 52 DCR 2331.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 306 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2002 (D.C. Law 14-164, June 25, 2002, law notification 49 DCR 6500).

For temporary (225 day) addition, see § 306 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2003 (D.C. Law 15-2, May 3, 2003, law notification 50 DCR 3782).

For temporary (225 day) addition, see § 306 of the Child and Youth, Safety and Health Omnibus Temporary Amendment Act of 2004 (D.C. Law 15-117, March 30, 2004, law notification 51 DCR 3804).

For temporary (225 day) addition, see § 307 of the Child and Youth, Safety and Health Omnibus Second Temporary Amendment Act of 2004 (D.C. Law 15-319, April 8, 2005, law notification 52 DCR 4708).

Emergency legislation. — For temporary (90 day) addition, see § 306 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2002 (D.C. Act 14-310, March 26, 2002, 49 DCR 3420).

For temporary (90 day) addition, see § 305 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2003 (D.C. Act 15-3, January 22, 2003, 50 DCR 1426).

For temporary (90 day) addition, see § 305 of Child and Youth, Safety and Health Omnibus Second Emergency Amendment Act of 2003 (D.C. Act 15-279, December 18, 2003, 51 DCR 60).

For temporary (90 day) addition, see § 305 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-407, March 18, 2004, 51 DCR 3659).

For temporary (90 day) addition, see § 305 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2004 (D.C. Act 15-630, November 30, 2004, 52 DCR 1143).

For temporary (90 day) addition, see § 305 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-30, February 17, 2005, 52 DCR 2993).

Legislative history of Law 15-353. — For Law 15-353, see notes following § 7-875.01.

For temporary (90 day) addition, see § 305 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-71, April 16, 2003, 50 DCR 3593).

For temporary (90 day) addition, see § 306 of Child and Youth, Safety and Health Omnibus Second Emergency Amendment Act of 2003 (D.C. Act 15-279, December 18, 2003, 51 DCR 60).

For temporary (90 day) addition, see § 306 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-407, March 18, 2004, 51 DCR 3659).

For temporary (90 day) addition, see § 306 of Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2004 (D.C. Act 15-630, November 30, 2004, 52 DCR 1143).

For temporary (90 day) addition, see § 306 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-30, February 17, 2005, 52 DCR 2993).

Legislative history of Law 15-353. — For Law 15-353, see notes following § 7-875.01.

Delegation of Authority. — Delegation of Authority Under Title II of D.C. Act 15-630, the Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2004 and any

Similar Succeeding Legislation, see Mayor's Order 2005-33, February 22, 2005 (52 DCR 2854).

Delegation of Authority Under Title II of D.C.

Law 15-353, the Child and Youth, Safety and Health Omnibus Amendment Act of 2004, see Mayor's Order 2005-73, May 5, 2005 (52 DCR 5501).

§ 7-875.06. Applicability.

This chapter shall apply to all individual and group health benefit plans issued or renewed 120 days after the issuance of rules required under § 7-875.05.

(Apr. 13, 2005, D.C. Law 15-353, § 307, 52 DCR 2331.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 308 of the Child and Youth, Safety and Health Omnibus Second Temporary Amendment Act of 2004 (D.C. Law 15-319, April 8, 2005, law notification 52 DCR 4708).

Emergency legislation. — For temporary (90 day) uniform child health screening requirements, see § 306 of Child and Youth, Safety and Health Omnibus Emergency

Amendment Act of 2004 (D.C. Act 15-630, November 30, 2004, 52 DCR 1143).

For temporary (90 day) uniform child health screening requirements, see § 307 of Child and Youth, Safety and Health Omnibus Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-30, February 17, 2005, 52 DCR 2993).

Legislative history of Law 15-353. — For Law 15-353, see notes following § 7-875.01.

SUBTITLE B-I. BLIND AND PHYSICALLY DISABLED PERSONS.

CHAPTER 9. REGISTER OF BLIND PERSONS.

Sec.

7-901. Establishment of register; purpose.

7-902. Persons required to file reports; confidentiality of register and reports; statistical abstracts.

Sec.

7-903. Definitions.

7-904. Limited liability of persons making reports.

§ 7-901. Establishment of register; purpose.

That the Mayor of the District of Columbia shall establish and maintain a register of blind persons residing in the District of Columbia. Such register shall, under regulations prescribed by the Council of the District of Columbia, provide information of such nature as will or may be of assistance in the planning of improved facilities and services for blind persons and in the restoration and conservation of sight.

(Aug. 3, 1968, 82 Stat. 633, Pub. L. 90-458, § 1.)

Section references. — This section is referred to in § 7-902.

Prior Codifications. — 1981 Ed., § 6-1601. 1973 Ed., § 6-1401.

Transfer of Functions. — Organization Order No. 104 provided for the establishment, maintenance, and administration of a register of blind persons by the Department of Vocational Rehabilitation. All functions stated in such Order were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by the Department of Human Services, by Reorganization Plan No. 2 of 1979, dated February 21, 1980.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 7-902. Persons required to file reports; confidentiality of register and reports; statistical abstracts.

Each: (1) health, educational, and social service agency or institution operating in the District of Columbia and having in its care or custody (either full or part time), or rendering service to, any blind person; (2) physician and osteopath licensed or registered by the District of Columbia who has in his professional care for diagnosis or treatment such a person; and (3) optometrist licensed by the District of Columbia who, in the course of his practice of optometry, ascertains that a person is blind, shall report in writing to the Mayor the name, age, and residence of such person and such additional information as the Council may, by regulation, require for incorporation in the register referred to in § 7-901. Such register and reports shall not be open to

public inspection. The Mayor may make available in the form of statistical abstracts or digests information contained in such register and reports if the identity of persons referred to in such register or reports is not disclosed in such abstracts or digests.

(Aug. 3, 1968, 82 Stat. 633, Pub. L. 90-458, § 2.)

Prior Codifications. — 1981 Ed., § 6-1602. 1973 Ed., § 6-1402.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code,

§ 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 7-903. Definitions.

For the purpose of this chapter:

(1) The term “blind person” means, and the term “blind” refers to, a person who:

(A) Is totally blind;

(B) Has impaired vision of not more than 20/200 visual acuity in the better eye and for whom vision cannot be improved to better than 20/200; or

(C) Who has loss of vision due wholly or in part to impairment of field vision or to other factors which affect the usefulness of vision to a like degree.

(2) The term “Mayor” means the Mayor of the District of Columbia or his designated agent.

(3) The term “Council” means the Council of the District of Columbia.

(Aug. 3, 1968, 82 Stat. 633, Pub. L. 90-458, § 3.)

Prior Codifications. — 1981 Ed., § 6-1603. 1973 Ed., § 6-1403.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code,

§ 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 7-904. Limited liability of persons making reports.

Any person who in good faith makes a report pursuant to this chapter or pursuant to any regulation promulgated under the authority of this chapter, shall not, by reason thereof, be personally liable in damages.

(Aug. 3, 1968, 82 Stat. 633, Pub. L. 90-458, § 4.)

Prior Codifications. — 1981 Ed., § 6-1604. 1973 Ed., § 6-1404.

CHAPTER 10. RIGHTS OF BLIND AND PHYSICALLY DISABLED PERSONS.

Sec.

7-1001. Equal access to public places. *

7-1002. Equal access to public accommodations and conveyances.

7-1003. [Repealed].

7-1004. Safety standards for drivers of motor vehicles.

Sec.

7-1005. Discrimination in employment prohibited.

7-1006. Equal access to housing.

7-1007. Penalties.

7-1008. White Cane Safety Day.

7-1009. Definitions.

§ 7-1001. Equal access to public places.

The blind and other persons with physical disabilities have the same right as the able-bodied to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places in the District of Columbia.

(Oct. 21, 1972, 86 Stat. 970, Pub. L. 92-515, § 1; Apr. 24, 2007, D.C. Law 16-305, § 25(a), 53 DCR 6198.)

Section references. — This section is referred to in §§ 7-1004 and 7-1007.

Prior Codifications. — 1981 Ed., § 6-1701. 1973 Ed., § 6-1501.

Effect of amendments. — D.C. Law 16-305

substituted “other persons with physical disabilities” for “the otherwise physically disabled”.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 7-531.01.

§ 7-1002. Equal access to public accommodations and conveyances.

(a) The blind and other persons with physical disabilities are entitled to full and equal accommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars, boats, or any other public conveyances or modes of transportation in the District of Columbia, hotels, lodging places, places of public accommodation, amusement, or resort, and other places to which the general public is invited in the District of Columbia, subject only to the conditions and limitations established by law or in accordance with law applicable alike to all persons.

(b) Every blind person or deaf person shall have the right to be accompanied by a dog guide, in any of the places, accommodations, or conveyances listed in subsection (a) of this section, without being denied access because of the dog guide and required to pay an extra charge for the dog guide; but any blind person or deaf person so accompanied shall be liable for any damage done to the premises or facilities by such dog.

(c) Every service animal trainer who is training an animal to be a service animal shall have the same access and liability conferred upon a person who is blind or deaf pursuant to subsection (b) of this section when accompanied by a service animal in training.

(Oct. 21, 1972, 86 Stat. 971, Pub. L. 92-515, § 2; Mar. 5, 1981, D.C. Law 3-144, § 2(a), 27 DCR 4659; Apr. 24, 2007, D.C. Law 16-305, § 25(b), 53 DCR 6198; May 22, 2010, D.C. Law 18-146, § 2(a), 57 DCR 2549.)

Section references. — This section is referred to in §§ 7-1004 and 7-1007.

Prior Codifications. — 1981 Ed., § 6-1702. 1973 Ed., § 6-1502.

Effect of amendments. — D.C. Law 16-305, in subsec. (a), substituted “other persons with physical disabilities” for “the otherwise physically disabled”.

D.C. Law 18-146 added subsec. (c).

Legislative history of Law 3-144. — Law 3-144, the “Deaf and Audio Handicapped Amendments Act of 1980,” was introduced in Council and assigned Bill No. 3-127, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on September 16, 1980 and September 30, 1980, respectively. Signed by the Mayor on

October 14, 1980, it was assigned Act No. 3-265 and transmitted to both Houses of Congress for its review.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 7-531.01.

Legislative history of Law 18-146. — Law 18-146, the “Service Animal Amendment Act of 2010,” was introduced in Council and assigned Bill No. 18-207, which was referred to the Committee on Public Safety and the Judiciary. The bill was adopted on first and second readings on February 2, 2010, and March 2, 2010, respectively. Signed by the Mayor on March 18, 2010, it was assigned Act No. 18-329 and transmitted to both Houses of Congress for its review. D.C. Law 18-146 became effective on May 22, 2010.

§ 7-1003. Architectural barrier-free design requirements. [Repealed].

Repealed.

(Mar. 21, 1987, D.C. Law 6-216, § 12(a)(8), 34 DCR 1072.)

Prior Codifications. — 1981 Ed., § 6-1703.

Legislative history of Law 6-216. — Law 6-216, the “Construction Codes Approval and Amendments Act of 1986,” was introduced in Council and assigned Bill No. 6-500, which was referred to the Committee of the Whole. The

Bill was adopted on first and second readings on November 18, 1986 and December 16, 1986, respectively. Signed by the Mayor on February 2, 1987, it was assigned Act No. 6-279 and transmitted to both Houses of Congress for its review.

§ 7-1004. Safety standards for drivers of motor vehicles.

The driver of a vehicle in the District of Columbia approaching a blind pedestrian who is carrying a cane predominantly white or metallic in color (with or without a red tip) or a deaf pedestrian, either of whom is using a dog guide shall take all necessary precautions to avoid injury to such blind or deaf pedestrian, and any driver who fails to take such precautions shall be liable in damages for any injury caused such pedestrian. A blind pedestrian in the District of Columbia not carrying such a cane or a deaf pedestrian, either of whom is not using a dog guide in any of the places, accommodations, or conveyances listed in §§ 7-1001 and 7-1002 shall have all of the rights and privileges conferred by law on other persons, and the failure of such a blind pedestrian to carry such a cane or the failure of a blind or deaf pedestrian to use a dog guide in any such places, accommodations, or conveyances shall not be held to constitute nor be evidence of contributory negligence.

(Oct. 21, 1972, 86 Stat. 971, Pub. L. 92-515, § 3; Mar. 5, 1981, D.C. Law 3-144, § 2(b), 27 DCR 4659.)

Prior Codifications. — 1981 Ed., § 6-1704. 1973 Ed., § 6-1503.

Legislative history of Law 3-144. — For

legislative history of D.C. Law 3-144, see Historical and Statutory Notes following § 7-1002.

§ 7-1005. Discrimination in employment prohibited.

The blind and other persons with physical disabilities shall be employed by: (1) every individual, partnership, firm, association, or corporation, or the receiver, trustee, or successor thereof (exclusive of the government of the United States or any agency thereof), doing business, and employing any individual for the purpose of such business, in the District of Columbia; and (2) the government of the District of Columbia, the Board of Education of the District of Columbia, the Board of Trustees of the University of the District of Columbia, the Board of Higher Education of the District of Columbia, and the Executive Officer of the District of Columbia courts, and all other employers supported in whole or in part by appropriations for the District of Columbia, on the same terms and conditions as the able-bodied, unless it is shown that the particular disability prevents the performance of the work involved.

(Oct. 21, 1972, 86 Stat. 971, Pub. L. 92-515, § 4; Apr. 24, 2007, D.C. Law 16-305, § 25(c), 53 DCR 6198.)

Section references. — This section is referred to in § 7-1007.

Prior Codifications. — 1981 Ed., § 6-1705. 1973 Ed., § 6-1504.

Effect of amendments. — D.C. Law 16-305

substituted “other persons with physical disabilities” for “the otherwise physically disabled”.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 7-531.01.

CASE NOTES

In general.

Even if applicant for disability retirement had valid claim of illegal discrimination related to promotion, retirement board was justified in declining to reopen disability retirement pro-

ceeding on that basis, since promotion was matter not within province of retirement board. *Smith v. Police & Firemen's Retirement & Relief Bd.*, 460 A.2d 997, 1983 D.C. App. LEXIS 383 (1983).

§ 7-1006. Equal access to housing.

(a) Blind persons and other persons with physical disabilities shall be entitled to full and equal access, as other members of the general public, to all housing accommodations offered for rent, lease, or compensation in the District of Columbia, subject to the conditions and limitations established by law or in accordance with law and applicable alike to all persons.

(b) Every blind or deaf person who has a dog guide, or who obtains a dog guide, shall be entitled to full and equal access to all housing accommodations referred to in this section, without being denied access because of the dog guide and required to pay an extra charge for the dog guide; but such blind or deaf person shall be liable for any damage done to the premises by such dog.

(c) Nothing in this section shall require any person renting, leasing, or providing real property for compensation in the District of Columbia to modify his property in any way or to provide a higher degree of care for a blind person or person with another physical disability than for a person who does not have a physical disability.

(Oct. 21, 1972, 86 Stat. 972, Pub. L. 92-515, § 5; Mar. 5, 1981, D.C. Law 3-144, § 2(c), 27 DCR 4659; Apr. 24, 2007, D.C. Law 16-305, § 25(d), 53 DCR 6198.)

Section references. — This section is referred to in § 7-1007.

Prior Codifications. — 1981 Ed., § 6-1706. 1973 Ed., § 6-1505.

Effect of amendments. — D.C. Law 16-305, in subsec. (a), substituted “persons with physical disabilities” for “physically disabled persons”; and, in subsec. (c), substituted “person with another physical disability” for “other-

wise physically disabled person” and “does not have a physical disability” for “is not physically disabled”.

Legislative history of Law 3-144. — For legislative history of D.C. Law 3-144, see Historical and Statutory Notes following § 7-1002.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 7-531.01.

CASE NOTES

In general.

For limited purposes of summary proceedings in landlord and tenant branch of superior court, landlord was not obligated to provide a wheelchair ramp to recreation area including pool, as claimed by tenant; tenant’s remedy for any such failure to accommodate her lay in a different proceeding. D.C. Code 1981, §§ 1-2515(a)(4), 6-1706(a); Landlord and Tenant Rule 5(b). *Killingham v. Wilshire Invs. Corp.*,

739 A.2d 804, 1999 D.C. App. LEXIS 225 (1999).

Rental housing providers have obligation to provide full access for disabled persons to a housing accommodation, the violation of which may be a defense to a suit for possession and back rent. D.C. Code 1981, § 6-1706(a). *Killingham v. Wilshire Invs. Corp.*, 739 A.2d 804, 1999 D.C. App. LEXIS 225 (1999).

§ 7-1007. Penalties.

(a) Any person or the agent of any person in the District of Columbia who denies or interferes with admittance to or enjoyment of any of the places, accommodations, or conveyances listed in §§ 7-1001 and 7-1002 or otherwise interferes with the rights of a blind person or person with another physical disability under § 7-1001, § 7-1002, § 7-1005, or § 7-1006 shall be imprisoned for not longer than 90 days, or fined not more than \$300, or both.

(b) A civil fine of \$250 may be imposed as an alternative sanction for any infraction of the provisions of this chapter pursuant to Chapter 18 of Title 2 [§ 2-1801.01 et seq.]. Adjudication of any infraction of this chapter shall be pursuant to Chapter 18 of Title 2 [§ 2-1801.01 et seq.].

(c) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], may issue rules to increase the fine in subsection (b) of this section.

(Oct. 21, 1972, 86 Stat. 972, Pub. L. 92-515, § 6; Apr. 24, 2007, D.C. Law 16-305, § 25(e), 53 DCR 6198; May 22, 2010, D.C. Law 18-146, § 2(b), 57 DCR 2549.)

Prior Codifications. — 1981 Ed., § 6-1707. 1973 Ed., § 6-1506.

Effect of amendments. — D.C. Law 16-305 substituted “person or person with another physical disability” for “or otherwise disabled person”.

D.C. Law 18-146 designated the existing text as subsec. (a); and added subsecs. (b) and (c).

Legislative history of Law 16-305. — For Law 16-305, see notes following § 7-531.01.

Legislative history of Law 18-146. — For Law 18-146, see notes following § 7-1002.

§ 7-1008. White Cane Safety Day.

Each year, the Mayor of the District of Columbia shall take suitable public notice of October 15th as White Cane Safety Day. He shall issue a proclamation commenting upon the significance of the white cane, and calling upon the citizens of the District of Columbia to observe the provisions of this chapter, to

be aware of the presence of persons with disabilities in the community, to keep safe and functional for persons with disabilities the streets, highways, sidewalks, walkways, public buildings, public facilities, other public places, places of public accommodation, amusement, and resort, and other places to which the public is invited, and to offer assistance to persons with disabilities upon appropriate occasions.

(Oct. 21, 1972, 86 Stat. 972; Pub. L. 92-515, § 7; Apr. 24, 2007, D.C. Law 16-305, § 25(f), 53 DCR 6198.)

Prior Codifications. — 1981 Ed., § 6-1708. 1973 Ed., § 6-1507.

Effect of amendments. — D.C. Law 16-305 substituted “persons with disabilities” for “disabled persons” and “the disabled”.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 7-531.01.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia

Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 7-1009. Definitions.

For the purposes of this chapter:

(1) The term “blind person” means, and the term “blind” refers to, a person who is totally blind, has impaired vision of not more than 20/200 visual acuity in the better eye and for whom vision cannot be improved to better than 20/200, or who has loss of vision due wholly or in part to impairment of field vision or to other factors which affect the usefulness of vision to a like degree.

(2) The term “deaf person” means a person who is totally deaf or a person with hearing impairment that severely interferes with his or her ability to hear environmental noises.

(3) The term “guide dog” means a dog that is specially trained to assist a blind or deaf person and one which a blind or deaf person relies on for assistance.

(4) The term “person with a physical disability” refers to an individual who has a medically determinable physical impairment (other than blindness) which interferes with his ability to move about, to assist himself, or to engage in an occupation.

(5) The term “service animal” means an animal, including a guide dog, that is specially trained to assist a person who is blind or has a physical disability and one which a person who is blind or has a physical disability relies on for assistance.

(6) The term “service animal in training” means an animal that is:

(A) At least 6 months of age;

(B) Undergoing special training to assist a person who is blind or has a physical disability;

(C) Accompanied by an experienced service animal trainer; and

(D) Designated as a service animal in training by wearing a harness, backpack, or vest that identifies it as a service animal in training.

(Oct. 21, 1972, 86 Stat. 972, Pub. L. 92-515, § 8; Mar. 5, 1981, D.C. Law 3-144, § 2(d), 27 DCR 4659; Apr. 24, 2007, D.C. Law 16-305, § 25(g), 53 DCR 6198; May 22, 2010, D.C. Law 18-146, § 2(c), 57 DCR 2549.)

Prior Codifications. — 1981 Ed., § 6-1709. 1973 Ed., § 6-1508.

Effect of amendments. — D.C. Law 16-305, in par. (4), substituted “person with a physical disability” for “otherwise physically disabled”.

D.C. Law 18-146 added pars. (5) and (6).

Legislative history of Law 3-144. — For legislative history of D.C. Law 3-144, see Historical and Statutory Notes following § 7-1002.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 7-531.01.

Legislative history of Law 18-146. — For Law 18-146, see notes following § 7-1002.

SUBTITLE C. MENTAL HEALTH.

CHAPTER 11. INTERSTATE COMPACT ON MENTAL HEALTH.

Sec.

- 7-1101. Authority to enter into Compact.
7-1102. Compact administrator authorized.
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Sec.

- 7-1105. Consultation concerning proposed transferee.
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§ 7-1101. Authority to enter into Compact.

The Mayor of the District of Columbia is hereby authorized to enter into and execute on behalf of the District of Columbia an agreement with any state or states legally joining therein in the form substantially as set forth in this section.

THE INTERSTATE COMPACT ON MENTAL HEALTH

ARTICLE I—PURPOSE AND FINDINGS

The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

ARTICLE II—DEFINITIONS

As used in this compact:

(a) "Sending state" shall mean a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent.

(b) "Receiving state" shall mean a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent.

(c) "Institution" shall mean any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency, and shall include Saint Elizabeth's Hospital in the District of Columbia.

(d) "Patient" shall mean any person subject to or eligible as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this compact.

(e) "After-care" shall mean care, treatment and services provided a patient, as defined herein, on convalescent status or conditional release.

(f) "Mental illness" shall mean mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, or the welfare of others, or of the community.

(g) "Mental deficiency" shall mean mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself and his affairs, but shall not include mental illness as defined herein.

(h) "State" shall mean any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

ARTICLE III—ELIGIBILITY AND PLACEMENT OF PATIENTS

(a) Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, he shall be eligible for care and treatment in an institution in that state irrespective of his residence, settlement or citizenship qualifications.

(b) The provisions of paragraph (a) of this article to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this paragraph shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

(c) No state shall be obliged to receive any patient pursuant to the provisions of paragraph (b) of this article unless the sending state has given advance notice of its intention to send the patient; furnished all available medical and other pertinent records concerning the patient; given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish; and unless the receiving state shall agree to accept the patient.

(d) In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he would be taken if he were a local patient.

(e) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

ARTICLE IV—AFTER-CARE OR SUPERVISION IN THE RECEIVING STATE

(a) Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive

after-care or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state shall have reason to believe that after-care in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such after-care in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

(b) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive after-care or supervision in the receiving state.

(c) In supervising, treating, or caring for a patient on after-care pursuant to the terms of this article, a receiving state shall employ the same standards of visitation, examination, care, and treatment that it employs for similar local patients.

ARTICLE V—ESCAPE OF DANGEROUS OR POTENTIALLY DANGEROUS PATIENTS

Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escape in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the state where found pending disposition in accordance with law.

ARTICLE VI—TRANSPORTING PATIENTS THROUGH PARTY STATES

The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact, without interference.

ARTICLE VII—PAYMENT OF COSTS

(a) No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

(b) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any two or more party states may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

(c) No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(d) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

(e) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a non-party state relating to institutionalization, care or treatment of the mentally ill or mentally deficient, or any statutory authority pursuant to which such agreements may be made.

ARTICLE VIII—GUARDIANS

(a) Nothing in this compact shall be construed to abridge, diminish, or in any way impair the rights, duties, and responsibilities of any patient's guardian on his own behalf or in respect of any patient for which he may serve, except that where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances; provided, however, that in the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue his power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

(b) The term "guardian" as used in paragraph (a) of this article shall include any guardian, trustee, legal committee, conservator, or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

ARTICLE IX — INAPPLICABILITY OF COMPACT TO PERSONS SUBJECT TO

PENAL SENTENCE; POLICY AGAINST PLACEMENT OF PATIENTS IN PRISONS OR JAILS

(a) No provision of this compact except Article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or

while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

(b) To every extent possible, it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

ARTICLE X—COMPACT ADMINISTRATORS

(a) Each party state shall appoint a "compact administrator" who, on behalf of his state, shall act as general coordinator of activities under the compact in his state and who shall receive copies of all reports, correspondence, and other documents relating to any patient processed under the compact by his state either in the capacity of sending or receiving state. The compact administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

(b) The compact administrators of the respective party states shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE XI—SUPPLEMENTARY AGREEMENTS

The duly constituted administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned shall find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

ARTICLE XII—EFFECTIVE DATE OF COMPACT

This compact shall enter into full force and effect as to any state when enacted by it into law and such state shall thereafter be a party thereto with any and all states legally joining therein.

ARTICLE XIII—WITHDRAWAL FROM COMPACT

(a) A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect one year after notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of this compact.

(b) Withdrawal from any agreement permitted by Article XII(b) as to costs or from any supplementary agreement made pursuant to Article XI shall be in accordance with the terms of such agreement.

ARTICLE XIV—CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

(Apr. 26, 1972, 86 Stat. 126, Pub. L. 92-280, § 2.)

Prior Codifications. — 1981 Ed., § 6-1801. 1973 Ed., § 6-1601.

References in text. — The reference to "Article XII(b)," in Article XIII(b), should probably be a reference to "Article VII(b)."

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

Complementary Legislation: Ala.—Code 1975, §§ 22-55-1 to 22-55-4. Alaska—AS 47.30.880. Ark.—A.C.A. §§ 20-50-101 to 20-50-106. Colo.—West's C.R.S.A. §§ 24-60-1001 to 24-60-1006. Conn.—C.G.S.A. §§ 17a-615 to 17a-618. Del.—16 Del.C. §§ 6101 to 6105. D.C.—D.C. Official Code, 2001 Ed. §§ 7-1101 to 7-1106. Fla.—West's F.S.A. §§ 394.479 to 394.484. Ga.—O.C.G.A. §§ 37-10-1 to 37-10-3. Hawaii—H R S §§ 335-1 to 335-5. Idaho—I.C.

§§ 66-1201 to 66-1205. Ill.—S.H.A. 45 ILCS 40/0.01 to 4%. Ind.—West's A.I.C. 12-28-2-1 to 12-28-2-4. Iowa—I.C.A. §§ 221.1 to 221.6. Kan.—K.S.A. 65-3101 to 65-3106. Ky.—KRS 210.520 to 210.550. La.—LSA-R.S. 28:721 to 28:726. Maine—34-B M.R.S.A. §§ 9001 to 9014. Md.—Code, Health-General, §§ 11-102 to 11-107. Mass.—M.G.L.A. c. 123 App., §§ 1-1 to 1-4. Mich.—M.C.L.A. §§ 330.1920 to 330.1930. Minn.—M.S.A. §§ 245.51 to 245.53. Mo.—V.A.M.S. §§ 630.810 to 630.835. Mt.—M.C.A. 53-22-101 to 53-22-106. Neb.—R.R.S. 1943, §§ 83-801 to 83-806. N.H.—RSA 135-A:1 to 135-A:6. N.J.—N.J.S.A. 30:7B-1 to 30:7B-18. N.M.—NMSA 1978, §§ 11-7-1 to 11-7-5. N.Y.—McKinney's Mental Hygiene Law, § 67.07. N.C.—G.S. §§ 122C-361 to 122C-366. N.D.—NDCC 25-11-01 to 25-11-06. Ohio—R.C. §§ 5119.50 to 5119.53. Okl.—43A Okl.St. Ann. §§ 6-201 to 6-205. Ore.—ORS 428.310 to 428.330. Pa.—62 P.S. §§ 1121 to 1126. R.I.—Gen.Laws. 1956, §§ 40.1-9-1 to 40.1-9-3. S.C.—Code 1976, §§ 44-25-10 to 44-25-60. S.D.—SDCL 27A-6-1 to 27A-6-5. Tenn.—T.C.A. §§ 33-9-201 to 33-9-207. Tex.—V.T.C.A., Health & Safety Code §§ 612.001 to 612.007. Utah—U.C.A. 1953, 62A-15-801, 62A-15-802. Vt.—18 V.S.A. §§ 9001 to 9014. Wash.—West's RCWA 72.27.010 to 72.27.070. W.Va.—Code, 27-14-1 to 27-14-5. Wis.—W.S.A. 51.75. Wyo.—Wyo.Stat. Ann. §§ 25-10-301 to 25-10-305.

CASE NOTES

ANALYSIS

Authority of court.
Due process.
In general.
Residence.

Authority of court.

Superior Court had authority under the Ervin Act to order District of Columbia to pay for civil committee's care outside of District. D.C. Code 1981, §§ 21-501, 21-511 to 21-513, 21-545(b), 21-586. In re Myrick, 624 A.2d 1222, 1993 D.C. App. LEXIS 125 (1993).

Even assuming that where no reasonable program of treatment is available in the community a trial court has the power, over the objection of the District of Columbia, to order involuntarily committed mental patient treated outside the jurisdiction, it should refrain from exercise of that power until the District is given formal notice of the apparent adequacy of local treatment and facilities and allowed ample opportunity to design a program of alternative local care utilizing the sole wealth of the facilities and services which are available to it within the jurisdiction. D.C. Code §§ 3-110, 21-541, 21-551, 32-405. District of Columbia v. H.J.B., 359 A.2d 285, 1976 D.C. App. LEXIS 294 (1976).

Due process.

Statute providing that a person committed to a public hospital but found not to be a resident of the District of Columbia is to be transferred to his state of residence if an appropriate institution in that state is willing to accept him may not be used to bar claim of a newly-arrived resident for medical public assistance since to do so would be unjustifiably discriminatory in violation of Fifth Amendment right to due process; also, resort to statute providing that all indigent insane persons residing in the District at the time they become insane are entitled to benefits of St. Elizabeths Hospital would also be invalid for such reason. D.C. Code §§ 21-551, 32-405; U.S. Const. Amend. 5. District of Columbia v. H.J.B., 359 A.2d 285, 1976 D.C. App. LEXIS 294 (1976).

In general.

District of Columbia has obligation to pay costs of medical treatment of one whom District has involuntarily civilly committed, whether or not individual is resident, until such time as another person or jurisdiction assumes responsibility for those costs. D.C. Code 1981, § 21-545. In re Myrick, 624 A.2d 1222, 1993 D.C. App. LEXIS 125 (1993).

Before trial court exercised any authority it might have to order 14-year-old involuntarily committed orphan treated at public expense

outside the District of Columbia, on ground that no suitable facilities were available within the District, the District was entitled to reasonable time to attempt to design a program for alternate local care and court was also to consider the public's as well as the patient's interest; public interest requires that a request for commitment of an extraordinary amount of public funds for treatment of a single patient be given closest administrative and judicial scrutiny. D.C. Code §§ 3-110, 21-541, 21-551, 32-405. District of Columbia v. H.J.B., 359 A.2d 285, 1976 D.C. App. LEXIS 294 (1976).

At common law, maintenance of the mentally ill by the public created no obligation on private parties. District of Columbia v. H.J.B., 359 A.2d 285, 1976 D.C. App. LEXIS 294 (1976).

Although charitable corporation was organized to accept custody and control of children brought into the country for adoption and was authorized to do any acts which would prevent such individuals from becoming public charges, such objectives do not, of themselves, create a parental relation between the committee and those children who might come into its care and did not create third-party rights in District of Columbia to reimbursement for expenses incurred in connection with involuntary commitment of mentally retarded orphan who had been brought into the United States by the corporation for purpose of adoption. D.C. Code § 29-201 et seq. District of Columbia v. H.J.B., 359 A.2d 285, 1976 D.C. App. LEXIS 294 (1976).

Where only by default on collapse of the adoption did custody of mentally retarded child, who was brought to the United States for purposes of adoption, fall to the charitable committee which had arranged for the adoption, custody had been maintained because of inability to locate a permanent arrangement because of the severe infirmity and committee had not been a penurious provider during its custodianship, doctrine of equitable estoppel furnished no basis for claim of reimbursement against committee for maintenance of child during involuntary commitment to District of Columbia hospital for the mentally ill. D.C. Code § 21-586. District of Columbia v. H.J.B., 359 A.2d 285, 1976 D.C. App. LEXIS 294 (1976).

Regardless of fact that proceeding involving involuntary commitment of mentally retarded child was not brought under authority of child neglect statute, such statute furnished no ground for charging charitable organization, which had arranged for child's adoption, with cost of her commitment since statute governing right of District of Columbia to reimbursement is controlling where neglect proceedings are

suspended because of incompetency of the child and such statute did not provide a claim for reimbursement against the organization. D.C. Code §§ 16-2301 et seq., 16-2315, 21-586. *District of Columbia v. H.J.B.*, 359 A.2d 285, 1976 D.C. App. LEXIS 294 (1976).

Since District of Columbia's right to reimbursement for treatment of persons involuntarily confined to a public hospital for the mentally ill arises solely by statute and is in derogation of common-law rules, such right is to be extended no further than necessary to permit those claims for recompense which are either specifically set out in the enabling provision or are fairly inferable from its language in the natural course of interpretation. D.C. Code § 21-586. *District of Columbia v. H.J.B.*, 359 A.2d 285, 1976 D.C. App. LEXIS 294 (1976).

Grant to a child-placing agency of parental rights, as opposed to parental duties, is primarily for purpose of vesting agency with authority to consent to adoption and does not, of its own force, expand schedule of liabilities in statute governing District of Columbia's right to reimbursement for treatment of persons involuntarily confined to a public hospital for the mentally ill, at least where the agency has acquired its most recent custodial relation by default of an adoption proceeding outside the District and has been unable to find an alternative placement because of a disability unknown at time when the child was released to the preadoptive family. D.C. Code §§ 21-586,

32-786. *District of Columbia v. H.J.B.*, 359 A.2d 285, 1976 D.C. App. LEXIS 294 (1976).

Residence.

Insofar as "residence" was at issue in determining retarded orphan's ability to claim medical care from the District of Columbia government, the matter to be decided was whether, in light of all available indicia of residence, independent of her confinement at St. Elizabeths Hospital, orphan's presence in the District could properly be accounted for as the product of something more than a temporary sojourn; burden on the residence issue was with the government. D.C. Code §§ 3-110, 21-541, 21-551, 32-405. *District of Columbia v. H.J.B.*, 359 A.2d 285, 1976 D.C. App. LEXIS 294 (1976).

In view of fact that custodian of mentally retarded orphan, who was brought to the United States for purpose of adoption, was a District of Columbia corporation, the orphan acquired a colorable claim to District of Columbia "residence" for purpose of medical treatment at public expense once she was placed directly in custody of officials operating from corporation's District of Columbia office absent evidence that transfer from New York office was intended as anything less than an indefinite arrangement for her care or some residue of permanent attachment to another jurisdiction, the District was liable for her care. D.C. Code §§ 3-110, 6-1601, art. III, 21-541, 21-551, 32-405. *District of Columbia v. H.J.B.*, 359 A.2d 285, 1976 D.C. App. LEXIS 294 (1976).

§ 7-1102. Compact administrator authorized.

Pursuant to this Compact, the Director of the Department of Mental Health shall be the Compact Administrator and, acting jointly with like officers of party states, shall have power to promulgate rules and regulations to carry out more effectively the terms of the Compact. The Compact Administrator is hereby authorized, empowered, and directed to cooperate with all departments, agencies, and officers of and in the government of the District of Columbia in facilitating the proper administration of the Compact or of any supplementary agreement or agreements entered into by the District thereunder.

(Apr. 26, 1972, 86 Stat. 130, Pub. L. 92-280, § 3; Dec. 18, 2001, D.C. Law 14-56, § 116(e), 48 DCR 7674.)

Prior Codifications. — 1981 Ed., § 6-1802. 1973 Ed., § 6-1602.

Effect of amendments. — D.C. Law 14-56, in subsec. (e), substituted "the Director of the Department of Mental Health shall be the Compact Administrator and," for "the Mayor of the District of Columbia is hereby authorized and empowered to designate an officer who shall be the Compact Administrator and who,".

Temporary Amendment of Section. —

For temporary (225 day) amendment of section, see § 16(e) of Department of Mental Health Establishment Temporary Amendment Act of 2001 (D.C. Law 14-51, October 30, 2001, law notification 48 DCR 10807).

Emergency legislation. — For temporary (90 day) amendment of section, see § 16(e) of Department of Mental Health Establishment Emergency Amendment Act of 2001 (D.C. Act 14-55, May 2, 2001, 48 DCR 4390).

For temporary (90 day) amendment of section, see § 16(e) of Department of Mental Health Establishment Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-101, July 23, 2001, 48 DCR 7123). *

For temporary (90 day) amendment of section, see § 116(e) of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

Legislative history of Law 14-56. — For Law 14-56, see notes following § 7-154.

References in text. — The “Compact,” referred to throughout the section, is set forth in § 7-1101.

Editor’s notes. — Designation of Compact Administrator: The Director, Department of Human Resources, was designated Compact Administrator for the District of Columbia by Commissioner’s Order No. 72-241A, dated Sep-

tember 20, 1972. The Department of Human Resources was replaced by the Department of Human Services by Reorganization Plan No. 2 of 1979, dated February 21, 1980.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 7-1103. Supplementary agreements.

The Compact Administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate officials of party states pursuant to Articles VII and XI of the Compact. In the event that such supplementary agreements shall require or contemplate the use of any institution or facility of the District of Columbia or require or contemplate the provision of any service by the District of Columbia, no such agreement shall have force or effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service.

(Apr. 26, 1972, 86 Stat. 130, Pub. L. 92-280, § 4.)

Prior Codifications. — 1981 Ed., § 6-1803. 1973 Ed., § 6-1603.

References in text. — The “Compact,” re-

ferred to at the end of the first sentence, is set forth in § 7-1101.

§ 7-1104. Discharge of financial obligations.

The Compact Administrator, subject to the approval of the Mayor or his designated agent, may make or arrange for any payments necessary to discharge any financial obligations imposed upon the District of Columbia by the Compact or by any supplementary agreement entered into thereunder.

(Apr. 26, 1972, 86 Stat. 131, Pub. L. 92-280, § 5.)

Prior Codifications. — 1981 Ed., § 6-1804. 1973 Ed., § 6-1604.

References in text. — The “Compact,” referred to near the end of the section, is set forth in § 7-1101.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the Dis-

trict of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly,

and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 7-1105. Consultation concerning proposed transferee.

The Compact Administrator is hereby directed to consult with the immediate family of any proposed transferee and, in the case of a proposed transferee from an institution in the District of Columbia to an institution in a party state, to take no final action without approval of the Superior Court of the District of Columbia.

(Apr. 26, 1972, 86 Stat. 131, Pub. L. 92-280, § 6.)

Prior Codifications. — 1981 Ed., § 6-1805. 1973 Ed., § 6-1605.

§ 7-1106. Distribution of copies of chapter.

Duly authorized copies of this chapter shall, upon its approval, be transmitted by the Mayor or his designated agent to the Governor of each state, the Attorney General and the Administrator of General Services of the United States, and the Council of State Governments.

(Apr. 26, 1972, 86 Stat. 131, Pub. L. 92-280, § 7.)

Prior Codifications. — 1981 Ed., § 6-1806. 1973 Ed., § 6-1606.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code,

§ 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia, and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CHAPTER 11A. DEPARTMENT OF MENTAL HEALTH ESTABLISHMENT.

| Sec. | Sec. |
|---|---|
| 7-1131.01. Short title. | 7-1131.11. System of Mental Health Care Sub-Council. |
| 7-1131.02. Definitions. | 7-1131.12. Transfer of functions, property, and personnel. |
| 7-1131.03. Establishment and purposes of the Department of Mental Health. | 7-1131.13. Prosecution and representation by Attorney General for the District of Columbia. |
| 7-1131.04. Powers and duties of the Department of Mental Health. | 7-1131.14. Rules. |
| 7-1131.05. Appointment and duties of Director. | 7-1131.15. Approval of Medicaid State Plan Amendment. |
| 7-1131.06. Appointment and duties of Chief Financial Officer. | 7-1131.16. Transfers to Department of Youth Rehabilitation Services. |
| 7-1131.07. Appointment and duties of Chief Clinical Officer. | 7-1131.17. Youth behavioral health program. |
| 7-1131.08. Appointment and duties of General Counsel. | 7-1131.18. Behavioral health resource guide. |
| 7-1131.09. Appointment and duties of Consumer and Family Affairs Officer. | 7-1131.19. Behavioral Health Ombudsman Program. |
| 7-1131.10. Partnership Council. | |

§ 7-1131.01. Short title.

This chapter may be cited as the “Department of Mental Health Establishment Amendment Act of 2001”.

(Dec. 18, 2001, D.C. Law 14-56, § 101, 48 DCR 7674.)

Emergency legislation. — For temporary (90 day) addition of section, see § 101 of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

Legislative history of Law 14-56. — Law 14-56, the “Department of Mental Health Establishment Amendment Act of 2001”, was introduced in Council and assigned Bill No. 14-

136, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 26, 2001, and July 10, 2001, respectively. Signed by the Mayor on July 24, 2001, it was assigned Act No. 14-119 and transmitted to both Houses of Congress for its review. D.C. Law 14-56 became effective on December 18, 2001.

§ 7-1131.02. Definitions.

For the purposes of this chapter, the term:

(1) “Behavioral health” means a person’s overall social, emotional, and psychological well-being and development.

(1A) “Behavioral health assessment” means a more thorough and comprehensive examination by a mental health professional of the behavioral health issues and needs identified during an initial behavioral health screening by which the mental health professional shall identify the type and extent of the behavioral health problem and make recommendations for treatment interventions.

(1B) “Behavioral Health Ombudsman” or “Ombudsman” means the individual responsible for administering the Behavioral Health Ombudsman Program.

(1C) “Behavioral Health Ombudsman Program” or “Ombudsman Program” means the program established in § 7-1131.19 to provide District residents with assistance in accessing behavioral health programs and services.

(1D) “Behavioral health screening” means a brief process designed to identify youth who are at risk of having behavioral health disorders that warrant immediate attention, or intervention, or to identify the need for further assessment with a more comprehensive examination.

(1E) “Business associate” means any organization or person working in association with, or providing services to, a covered entity who handles or discloses Personal Health Information, as that term is interpreted in 45 CFR 160.103 pursuant to the Health Insurance Portability and Accountability Act of 1996, approved August 21, 1996 (110 Stat. 1936; 42 U.S.C. § 201, note)(“HIPAA”).

(1F) “Children or youth with mental health problems” means persons under 18 years of age, or persons under 22 years of age and receiving special education, youth, or child welfare services, who:

(A) Have, or are at risk of having, a diagnosable mental, behavioral, or emotional disorder (including those of biological etiology) which substantially impairs the mental health of the person or is of sufficient duration to meet diagnostic criteria specified within the DSM-IV or the ICD-9-CM equivalent (and subsequent revisions), with the exception of substance abuse disorders, mental retardation, and other developmental disorders, or seizure disorders, unless those exceptions co-occur with another diagnosable serious emotional disturbance; and

(B)(i) Demonstrate either functional impairments or symptoms that significantly disrupt their academic or developmental progress or family and interpersonal relationships; or

(ii) Have an emotional disturbance causing problems so severe as to require significant mental health intervention.

(2) “Consumers of mental health services” means adults, children, or youth who seek or receive mental health services or mental health supports funded or regulated by the Department.

(3) “Core services agency” means a community-based provider of mental health services and mental health supports that is certified by the Department and that acts as a clinical home for consumers of mental health services by providing a single point of access and accountability for diagnostic assessment, medication-somatic treatment, counseling and psychotherapy, community support services, and access to other needed services.

(4) “Court” means the Superior Court of the District of Columbia.

(5) “Cultural competence” means the ability of a provider to deliver mental health services and mental health supports in a manner that effectively responds to the languages, values, and practices present in the various cultures of the provider’s consumers of mental health services.

(6) “Department” means the Department of Mental Health.

(7) “Director” means the Director of the Department of Mental Health.

(8) “District” means the District of Columbia.

(9) “DSM-IV” means the most recent version of the Diagnostic and Statistical Manual of Mental Disorders.

(10) “DSM-IV ‘V’ Codes” means “V” codes as defined in the most recent version of the Diagnostic and Statistical Manual of Mental Disorders.

(10A) "DYRS" means the Department of Youth Rehabilitation Services.

(11) "Hospital" means a public or private institution, or part thereof, operating in the District and licensed to provide inpatient care and certified to provide treatment for persons suffering from physical or mental illness.

(12) "ICD-9-CM" means the most recent version of the International Classification of Diseases Code Manual.

(13) "Individual Plan of Care" means the individualized service plan for a child or youth with or at risk of mental health problems, including processes for the appropriate transition of youth receiving mental health services and mental health supports from the system of care for children, youth, and their families into the system of care for adults.

(14) "Individual Recovery Plan" means the individualized service plan for a person with mental illness.

(15) "Joint consent" means a process established by the Department to enable all participating providers to rely on a single form in which a consumer of mental health services consents to the use of his or her protected mental health information by participating providers in the Department's organized health care arrangement, for the purposes of delivering treatment, obtaining payment for services and supports rendered, and performing certain administrative operations, such as quality assurance, utilization review, accreditation, and oversight.

(16) "Medical Assistance Administration" means the division of the District's Department of Health responsible for administering the District's Medical Assistance Program.

(17) "Medical Assistance Program" and "Medicaid Program" mean the program described in the Medicaid State Plan and administered by the Medical Assistance Administration pursuant to § 1-307.02(b) and title XIX of the Social Security Act, approved July 30, 1965 (79 Stat. 343; 42 U.S.C. § 1396 et seq.).

(18) "Mental health services" means the services funded or regulated by the Department for the purpose of addressing mental illness or mental health problems.

(19) "Mental health supports" means the supports funded or regulated by the Department for the purpose of addressing mental illness or mental health problems.

(19A) "Oak Hill Youth Center" means the secure juvenile facility currently operated by DYRS in Laurel, Maryland.

(20) "Organized health care arrangement," means an organized system of health care in which more than one provider participates, and in which the participating providers hold themselves out to the public as participating in a joint arrangement, and either:

(A) Participate in joint activities that include utilization review under Chapter 8 of Title 44 in which health care decisions by participating providers are reviewed by other participating providers or by a third party on their behalf; or

(B) Participate in quality assessment and improvement activities under Chapter 8 of Title 44 in which mental health services or mental health

supports provided by participating providers are assessed by other participating providers or by a third party on their behalf.

(21) "Participating provider" means a provider of mental health services or mental health supports that, through participation in the joint consent promulgated by the Department pursuant to § 7-1131.14(6), joins the organized health care arrangement created by the Department.

(22) "Partnership Council" means the council appointed by the Director pursuant to § 7-1131.10 to advise him or her with respect to departmental matters.

(23) "Personal representative" means an individual, whether or not an attorney, designated by a consumer of mental health services to represent the consumer's personal interests with regard to his or her mental health needs.

(24) "Persons with mental illness" means persons who:

(A) Have a diagnosable mental, behavioral, or emotional disorder (including those of biological etiology) which substantially impairs the mental health of the person or is of sufficient duration to meet diagnostic criteria specified within the DSM-IV or its ICD-9-CM equivalent (and subsequent revisions) with the exception of DSM-IV "V" codes, substance abuse disorders, mental retardation, and other developmental disorders, or seizure disorders, unless those exceptions co-occur with another diagnosable mental illness; and

(B)(i) Are 18 years of age or over and are not consumers of special education, youth, or child welfare services; or

(ii) Are 22 years of age or over.

(25) "Physician" means a person licensed under the laws of the District to practice medicine, or a person who practices medicine in the employment of the government of the United States.

(26) "Protected mental health information" means information regulated by Chapter 12 of this title.

(27) "Provider" means an individual or entity that:

(A) Is duly licensed or certified by the Department to provide mental health services or mental health supports; or

(B) Has entered into an agreement with the Department to provide mental health services or mental health supports.

(28) "Regulate" means all non-professional certification, licensing, monitoring, and related functions, except fire inspections, food service inspections, the issuance of building permits and certificates of occupancy, all inspections relating to these permits and certificates, and all responsibilities under § 1-307.02.

(29) "Residents of the District" means persons who voluntarily live in the District and have no intention of presently removing themselves from the District. The term "residents of the District" shall not include persons who live in the District solely for a temporary purpose. Residency shall not be affected by temporary absence from and the subsequent return or intent to return to the District. Residency shall not depend upon the reason that persons entered the District, except to the extent that it bears upon whether they are in the District for a temporary purpose.

(29A) "Secure Facilities" means Oak Hill Youth Center, the Youth Services

Center, and any successor facilities or new secure facilities operated by or on behalf of DYRS for youth in DYRS custody.

(30) “System of care for adults” means a community support system for persons with mental illness that is developed through collaboration in the administration, financing, resource allocation, training, and delivery of services across all appropriate public systems. Each person’s mental health services and mental health supports are based on an Individual Recovery Plan, designed to promote recovery and develop social, community, and personal living skills, and to meet essential human needs, and includes the appropriate integrated, community-based outpatient services and inpatient care, outreach, emergency services, crisis intervention and stabilization, age-appropriate educational and vocational readiness and support, housing and residential treatment and support services, family and caregiver supports and education, and services to meet special needs, which may be delivered by both public and private entities.

(31) “System of care for children, youth, and their families” means a community support system for children or youth with mental health problems and their families, which is developed through collaboration in the administration, financing, resource allocation, training, and delivery of services across all appropriate public systems. Each child’s or youth’s mental health services and mental health supports are based on a single, child-and youth-centered, and family-focused Individual Plan of Care, encompassing all necessary and appropriate services and supports, which may be delivered by both public and private entities. Prevention, early intervention, and mental health services and mental health supports to meet individual and special needs are delivered in natural, nurturing, and integrated environments, recognize the importance of and support for the maintenance of enduring family relationships, and are planned and developed within the District and as close to the child’s or youth’s home as possible so that families need not relinquish custody to secure treatment for their children and youth.

(31A) “Youth” means an individual under 18 years of age residing in the District and those individuals classified as youth in the custody of DYRS and the Child and Family Services Agency who are 21 years of age or younger.

(32) “Youth Services Center” means the secure juvenile facility currently operated by DYRS in the District of Columbia.

(Dec. 18, 2001, D.C. Law 14-56, § 102, 48 DCR 7674; Mar. 2, 2007, D.C. Law 16-192, § 5022(a), 53 DCR 6899; June 7, 2012, D.C. Law 19-141, § 402(a), 59 DCR 3083.)

Effect of amendments. — D.C. Law 16-192 added pars. (10A), (19A), (29A), and (32).

D.C. Law 19-141 redesignated former par. (1) as par. (1F); and added pars. (1), (1A), (1B), (1C), (1D), (1E), and (31A).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(a) of Comprehensive Psychiatric Emergency Program Long-Term Ground Lease Tem-

porary Act of 2006 (D.C. Law 16-298, March 6, 2007, law notification 54 DCR 5144).

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 2 of Department of Mental Health Establishment Temporary Amendment Act of 2001 (D.C. Law 14-51, October 30, 2001, law notification 48 DCR 10807).

Emergency legislation. — For temporary

(90 day) addition of section, see § 2 of Department of Mental Health Establishment Emergency Amendment Act of 2001 (D.C. Act 14-55, May 2, 2001, 48 DCR 4390).

For temporary (90 day) addition of section, see § 2 of Department of Mental Health Establishment Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-101, July 23, 2001, 48 DCR 7123).

For temporary (90 day) addition of section, see § 102 of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

For temporary (90 day) amendment of section, see § 5022(a) of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) amendment of section, see § 5022(a) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) amendment of section, see § 2(a) of Comprehensive Psychiatric Emergency Program Long-Term Ground Lease Emergency Act of 2006 (D.C. Act 16-529, December 4, 2006, 53 DCR 9833).

For temporary (90 day) amendment of section, see § 5022(a) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

For temporary (90 day) amendment of section,

see § 2(a) of Comprehensive Psychiatric Emergency Program Long-Term Ground Lease Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-16, February 20, 2007, 54 DCR 1774).

For temporary (90 day) repeal of section 2 of D.C. Law 16-298, see § 2 of Comprehensive Psychiatric Emergency Program Long-Term Ground Lease Emergency Amendment Act of 2007 (D.C. Act 17-80, July 26, 2007, 54 DCR 7636).

Legislative history of Law 14-51. — For D.C. Law 14-51, see notes following § 7-154.

Legislative history of Law 14-56. — For Law 14-56, see notes following § 7-1131.01.

Legislative history of Law 16-192. — For Law 16-192, see notes following § 7-751.16a.

Legislative history of Law 19-141. — Law 19-141, the “South Capitol Street Memorial Amendment Act of 2012”, was introduced in Council and assigned Bill No. 19-211, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on March 6, 2012, and March 20, 2012, respectively. Signed by the Mayor on April 10, 2012, it was assigned Act No. 19-344 and transmitted to both Houses of Congress for its review. D.C. Law 19-141 became effective on June 7, 2012.

Short title. — Short title: Section 5021 of D.C. Law 16-192 provided that subtitle C of title V of the act may be cited as the “Department of Mental Health Establishment Amendment Act of 2006”.

§ 7-1131.03. Establishment and purposes of the Department of Mental Health.

(a) There is established as a separate cabinet-level Department, subordinate to the Mayor, the Department of Mental Health.

(b) The Department shall be the successor in interest to the Commission on Mental Health Services, established by Mayor’s Reorganization Plan No. 3 of 1986, effective January 3, 1987 (part B of subchapter VII of Chapter 15 of Title 1), and Mayor’s Order No. 88-168, effective July 13, 1988, and under receivership in the case of *Dixon, et al. v. Williams, et al.*, C.A. No. 74-285 (NHJ), in the United States District Court for the District of Columbia.

(c) The provisions of this chapter are intended to be construed in a manner consistent with all outstanding orders of the United States District Court in *Dixon, et al. v. Williams, et al.*, including the Final Plan adopted by the District Court in its April 2, 2001 order.

(d) The Department shall have as its purposes:

(1) Developing a system of care for adults that is integrated to the maximum practicable extent with other public systems in the District, including but not limited to addiction treatment and prevention, criminal justice, education, health, housing, income maintenance, and vocational rehabilitation;

(2) Developing a system of care for children, youth, and their families that is integrated to the maximum practicable extent with other public systems in the District, including but not limited to addiction treatment and prevention, child welfare, criminal justice,⁴ developmental services, education, health, housing, income maintenance, juvenile justice, and vocational rehabilitation;

(3) Ensuring that persons with mental illness and children or youth with mental health problems are treated in the most integrated setting that can be accommodated, consistent with individual needs and public safety;

(4) Fostering the development of high quality, comprehensive, cost effective, and culturally competent mental health services and mental health supports, based on recognized local needs, especially for persons with serious mental illness and children or youth with serious emotional disturbances;

(5) Promoting mental health and public awareness of mental health issues;

(6) Ensuring that services provided to mental health consumers meet standards established by the Department pursuant to § 7-1131.14(2)-(5) for the operation of mental health services and mental health supports;

(7) Developing and implementing strategies to eliminate barriers and improve access to mental health services and mental health supports for consumers of mental health services; and

(8) Ensuring the participation of consumers, families, employees, providers, and advocates of mental health services and mental health supports in the planning, delivery, monitoring, and evaluation of these services and supports.

(e) In assessing or meeting the service needs of consumers of mental health services, the Department shall not discriminate against consumers based upon their eligibility or non-eligibility for Medicaid, Medicare, or private insurance coverage; provided, that nothing in this section shall preclude the Department from establishing by regulation a mental-health-benefit program or plan based upon eligibility or non-eligibility for Medicaid, Medicare, or private insurance coverage.

(f) Nothing in this chapter requires or shall be construed as requiring the Department or any provider with which the Department contracts to provide mental health services or mental health supports to persons who are not residents of the District, except where those persons are likely to injure themselves or others if services are not provided or where services are otherwise required by law.

(g) Nothing in this chapter shall limit the civil rights of consumers of mental health services who have reached the age of majority under District law.

(h) Nothing in this chapter shall affect the authority of the Medical Assistance Administration as the single state agency for the administration of the Medicaid Program under section 1902(a)(5) of the Social Security Act, approved July 30, 1965 (79 Stat. 344; 42 U.S.C. § 1396a(a)(5)).

(Dec. 18, 2001, D.C. Law 14-56, § 103, 48 DCR 7674; Sept. 14, 2011, D.C. Law 19-21, § 5033, 58 DCR 6226.)

Effect of amendments. — D.C. Law 19-21, provided, that nothing in this section shall in subsec. (e), substituted “insurance coverage; preclude the Department from establishing by

regulation a mental-health-benefit program or plan based upon eligibility or non-eligibility for Medicaid, Medicare, or private insurance coverage" for "insurance coverage".

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 3 of Department of Mental Health Establishment Temporary Amendment Act of 2001 (D.C. Law 14-51, October 30, 2001, law notification 48 DCR 10807).

Emergency legislation. — For temporary (90 day) addition of section, see § 3 of Department of Mental Health Establishment Emergency Amendment Act of 2001 (D.C. Act 14-55, May 2, 2001, 48 DCR 4390).

For temporary (90 day) addition of section, see § 3 of Department of Mental Health Establishment Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-101, July 23, 2001, 48 DCR 7123).

For temporary (90 day) addition of section, see § 103 of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

For temporary (90 day) addition of section, see § 5002 of Fiscal Year 2012 Budget Support Emergency Act of 2011 (D.C. Act 19-93, June 29, 2011, 58 DCR 5599).

For temporary (90 day) amendment of section, see § 5003 of Fiscal Year 2012 Budget Support Emergency Act of 2011 (D.C. Act 19-93, June 29, 2011, 58 DCR 5599).

Legislative history of Law 14-56. — For Law 14-56, see notes following § 7-1131.01.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 7-731.

§ 7-1131.04. Powers and duties of the Department of Mental Health.

Notwithstanding any other provision of law, the Department of Mental Health shall:

(1) Plan, develop, coordinate, and monitor comprehensive and integrated mental health systems of care for adults and for children, youth, and their families in the District, so as to maximize utilization of mental health services and mental health supports and to assure that services for priority populations identified in the Department's annual plan are funded within the Department's appropriations or authorizations by Congress and are available;

(2) Arrange for all authorized, publicly funded mental health services and mental health supports for the residents of the District, whether operated directly by, or through contract with, the Department except that DYRS shall be responsible for the provision of mental health services for youth in custody in DYRS secure facilities;

(3) Make grants, pay subsidies, purchase services, and provide reimbursement for mental health services and mental health supports;

(4) Arrange for, or if necessary directly provide, inpatient mental health services for all persons identified to the Department who meet criteria for admission for such services;

(5) Directly operate a hospital to provide inpatient mental health services, and seek to achieve and maintain the hospital's certification by the Health Care Financing Administration;

(6) Directly operate one core services agency, for 3 years from December 18, 2001, or longer, as needed, to address the community mental health needs of the residents of the District;

(7) Arrange for a 24-hour, District-wide telephone communication service to provide intervention services for adults, children, and youth in need of mental health services and mental health supports including, but not limited to, observation, evaluation, emergency treatment, and when necessary, referral for mental health services and mental health supports;

(8) Beginning no later than October 1, 2001, be the exclusive agency to regulate all mental health services and mental health supports, including but not limited to housing services and residential treatment centers for children, but excluding the licensure of professionals, notwithstanding the licensing powers and responsibilities given to other District agencies and officials under the following laws:

- (A) Subchapter I-A of Chapter 28 of Title 47;
- (B) Subchapter I-B of Chapter 28 of Title 47; and
- (C) Subchapter I of Chapter 5 of Title 44;

(9) Facilitate the delivery of acute inpatient mental health services and mental health supports through community or public hospitals in the District, including coordinating comprehensive mental health services and mental health supports for children, youth, and their families;

(10) Arrange for the care of persons committed to the Department by the court pursuant to § 21-545, and arrange for their periodic evaluation and ongoing treatment;

(11) Serve as the "Compact Administrator" under Article X of the Interstate Compact on Mental Health as set forth in Chapter 11 of this title;

(12) Consistent with the purposes of this chapter, provide consultation and technical assistance to providers of mental health services and mental health supports who receive financial support from the Department;

(13) Upon request or on its own initiative, investigate, or ask another agency to investigate, any complaint alleging abuse or neglect of any consumer of mental health services, and, if the investigation by the Department or an investigation by any other agency or entity substantiates the charge of abuse or neglect, take appropriate action to correct the situation, including notification of other appropriate authorities;

(14) Independent of the District of Columbia Office of Personnel but consistent with Chapter 6 of Title 1, serve as the personnel authority for all employees of the Department, including exercising full authority to hire, retain, and terminate personnel, and to establish their compensation and reimbursement consistent with the District's wage grade and non-wage grade schedules and the Congressionally-approved budget;

(15) Independent of the District of Columbia Office of Contracting and Procurement, exercise procurement authority to carry out the purposes of the Department, including contracting and contract oversight. The Department shall exercise this authority consistent with Unit A of Chapter 3 of Title 2 [§ 2-351.01 et seq.]; except with regard to the powers and duties outlined in § 2-301.05(a), (b), (c), and (e);

(16) Take, hold, and administer in trust for the District any grant, devise, gift, or bequest made to the District or to the Department for the use of persons under its care or for the expenditure for any work which the Department is authorized to undertake; and

(17) Enter into memoranda of agreement with other agencies of the District to provide for the orderly transition of the licensure responsibilities set forth in this section.

(Dec. 18, 2001, D.C. Law 14-56, § 104, 48 DCR 7674; Mar. 2, 2007, D.C. Law 16-192, § 5022(b), 53 DCR 6899.)

Effect of amendments. — D.C. Law 16-192, in par. (2), inserted “except that DYRS shall be responsible for the provision of mental health services for youth in custody in DYRS secure facilities” following “Department”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(b) of Comprehensive Psychiatric Emergency Program Long-Term Ground Lease Temporary Act of 2006 (D.C. Law 16-298, March 6, 2007, law notification 54 DCR 5144).

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 4 of Department of Mental Health Establishment Temporary Amendment Act of 2001 (D.C. Law 14-51, October 30, 2001, law notification 48 DCR 10807).

Emergency legislation. — For temporary (90 day) addition of section, see § 4 of Department of Mental Health Establishment Emergency Amendment Act of 2001 (D.C. Act 14-55, May 2, 2001, 48 DCR 4390).

For temporary (90 day) addition of section, see § 4 of Department of Mental Health Establishment Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-101, July 23, 2001, 48 DCR 7123).

For temporary (90 day) addition of section, see § 104 of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

For temporary (90 day) additions, see §§ 5102, 5113, 5114 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

For temporary (90 day) amendment of section, see § 5022(b) of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) amendment of section, see § 5022(b) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) amendment of section, see § 2(b) of Comprehensive Psychiatric Emergency Program Long-Term Ground Lease Emergency Act of 2006 (D.C. Act 16-529, December 4, 2006, 53 DCR 9833).

For temporary (90 day) amendment of section, see § 5022(b) of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

For temporary (90 day) amendment of section, see § 2(b) of Comprehensive Psychiatric Emergency Program Long-Term Ground Lease Congressional Review Emergency Amendment

Act of 2007 (D.C. Act 17-16, February 20, 2007, 54 DCR 1774).

For temporary (90 day) repeal of section 2 of D.C. Law 16-298, see § 2 of Comprehensive Psychiatric Emergency Program Long-Term Ground Lease Emergency Amendment Act of 2007 (D.C. Act 17-80, July 26, 2007, 54 DCR 7636).

For temporary (90 day) addition of section, see § 5012 of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) addition of section, see § 5012 of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 14-56. — For Law 14-56, see notes following § 7-1131.01.

Legislative history of Law 16-192. — For Law 16-192, see notes following § 7-751.16a.

Short title. — Short title of subtitle J of title V of Law 16-33: Section 5101 of D.C. Law 16-33 provided that subtitle J of title V of the act may be cited as the Residential Treatment Centers Placement Act of 2005.

Short title of subtitle K of title V of Law 16-33: Section 5111 of D.C. Law 16-33 provided that subtitle K of title V of the act may be cited as the Department of Mental Health Retirement Incentive Programs Act of 2005.

Editor's notes. — Section 5102 of D.C. Law 16-33 provided:

“Sec. 5102. Residential treatment centers placement agreement.

“(a) The Department of Mental Health (“DMH”), the Children and Family Services Administration (“CFSA”), and the Department of Youth Rehabilitation Services (“DYRS”) shall enter into an agreement for DMH to contract for and authorize placements for all children and youth requiring residential treatment center placement, regardless of the fund source for children and youth with emotional or mental disorders.

“(b) The agreement shall require DMH, CFSA, and DYRS to plan and contract jointly for evidence-based, effective community alternatives to residential treatment center placements.

“(c) All residential treatment center providers who currently are not certified who choose to remain contractors with the District and who meet certification standards shall be certified by DMH.”.

Sections 5112 to 5114 of D.C. Law 16-33 provided:

“Sec. 5112. Definitions.

“For the purposes of this act, the term “felony” means an offense that is punishable by

a term of imprisonment that exceeds one year or a fine of at least \$1,000, or both.

"Sec. 5113. Easy out retirement incentive.

"(a) Notwithstanding section 1106 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D. C. Official Code § 1-611.06) ("CMPA"), if the Council adopts changes to the Career and Excepted Service compensation system under section 1104 of the CMPA that authorize the Mayor to establish a retirement incentive program for certain District employees ("Easy Out Program"), the Department of Mental Health is hereby authorized to offer the cash incentives described in subsection (b) to employees who are eligible to participate in any Easy Out Program approved by the federal Office of Personnel Management and the District of Columbia Office of Personnel for fiscal year 2006, if the Department of Mental Health chooses to participate in the Easy Out Program.

"(b) The Department of Mental Health may offer a retirement incentive of up to 50% of an employee's annual rate of base pay, based on the employee's salary or pay schedule in effect on October 1, 2005, not to exceed \$25,000, to be paid within one year of the employee's retirement.

"(c) Retirement incentive payments shall be prorated in the case of a part-time employee.

"(d) Retirement incentive payments shall not be considered basic pay for computing retirement entitlement, insurance entitlement, any category of premium pay entitlement, lump-sum leave, or any other entitlement that is computed on basic pay.

"(e) No incentive payment shall be paid to:

"(1) An employee who is a reemployed annuitant under the provisions of 5 U.S.C. § 8344;

"(2) An employee who is in a critical position as defined by the Department of Mental Health;

"(3) An employee who is under indictment or who is charged by information with or who has been convicted of a felony, or who has pled guilty or has been convicted after a plea of nolo contendere to a felony, related to his or her employment duties; provided, that any employee who is ultimately acquitted or cleared of any charge that caused his or her ineligibility shall be eligible for all benefits as if that employee had never been indicted for or charged by information with a felony; or

"(4) An employee who, based on conduct related to his or her employment duties, has been convicted of a misdemeanor, or who has pled guilty or has been convicted after a plea of nolo contendere to a misdemeanor; provided, that any employee who is ultimately acquitted or cleared of any charge that caused his or her ineligibility shall be eligible for all benefits as if

that employee had never been charged with a misdemeanor.

"(f) An employee who receives an incentive payment under the Easy Out Program shall not be eligible for reemployment with the District government for 5 years from the date of retirement, and shall not be hired or retained as a sole source consultant or personal services contractor for 5 years from the date of retirement.

"Sec. 5114. Early out retirement incentive.

"(a) Notwithstanding section 1106 of the CMPA, if the Council adopts changes to the Career and Excepted Service compensation system under section 1104 of the CMPA that authorize the Mayor to establish a retirement incentive program for certain District employees ("Early Out Program"), the Department of Mental Health is hereby authorized to offer the cash incentives described in subsection (b) to employees who are eligible to participate in any Early Out Program approved by the federal Office of Personnel Management and the District of Columbia Office of Personnel for fiscal year 2006, if the Department of Mental Health chooses to participate in the Early Out Program.

"(b) The Department of Mental Health may offer a retirement incentive of up to 50% of an employee's annual rate of base pay, based on the employee's salary or pay schedule in effect on October 1, 2005 not to exceed \$25,000, to be paid within one year of the employee's retirement.

"(c) Retirement incentive payments shall be prorated in the case of a part-time employee.

"(d) Retirement incentive payments shall not be considered basic pay for computing retirement entitlement, insurance entitlement, any category of premium pay entitlement, lump-sum leave, or any other entitlement that is computed on basic pay.

"(e) No incentive payment shall be paid to:

"(1) An employee who is a reemployed annuitant under the provisions of 5 U.S.C. § 8344;

"(2) An employee who is in a critical position as defined by the Department of Mental Health;

"(3) An employee who is under indictment or who is charged by information with or who has been convicted of a felony, or who has pled guilty or has been convicted after a plea of nolo contendere to a felony, related to his or her employment duties; provided, that any employee who is ultimately acquitted or cleared of any charge that caused his or her ineligibility shall be eligible for all benefits as if that employee had never been indicted for or charged by information with a felony; or

"(4) An employee who, based on conduct related to his or her employment duties, has been convicted of a misdemeanor, or who has pled guilty or has been convicted after a plea of nolo contendere to a misdemeanor; provided, that

any employee who is ultimately acquitted or cleared of any charge that caused his or her ineligibility shall be eligible for all benefits as if that employee had never been charged with a misdemeanor.

"(f) An employee who receives an incentive payment under the Early Out Program shall

not be eligible for reemployment with the District government for 5 years from the date of retirement, and shall not be hired or retained as a sole source consultant or personal services contractor for 5 years from the date of retirement."

§ 7-1131.05. Appointment and duties of Director.

The Department shall be administered by a full-time Director appointed by the Mayor and confirmed by the Council. The Director, who shall report to the Mayor, shall be qualified by experience and training to carry out the purposes of this chapter. In addition to such other duties as may be lawfully imposed, the Director shall:

(1) Serve as the chief executive officer of the Department, organizing the Department for its efficient operation, including creating offices within the Department as necessary, and exercising any other powers necessary and appropriate to implement the provisions of the law;

(2) Hire, retain, and terminate such personnel as appropriate to perform the functions of the Department consistent with Chapter 6 of Title 1;

(3) Establish, through contracts and memoranda of agreement or understandings with governmental bodies, public and private agencies, institutions, and organizations, systems of care for adults, and for children, youth, and their families, as well as for other identified priority populations;

(4) Establish priorities for the delivery of mental health services and mental health supports, and develop plans for the operation and coordination of core services agencies and other providers, so as to encourage the development and expansion of preventive, rehabilitative, and consultative mental health services and mental health supports with an emphasis on continuity of care;

(5) In accordance with Chapter 5 of Title 2, issue and enforce all rules and regulations necessary and appropriate to the proper accomplishment of the mental health duties and functions imposed by this chapter;

(6) Execute contracts on behalf of the Department;

(7) Coordinate with the activities of the State Mental Health Planning Council, established pursuant to section 1914 of the Public Health Service Act, approved July 10, 1992 (106 Stat. 382; 42 U.S.C. § 300x-3) and Mayor's Order 88-261, effective December 14, 1988; and

(8)(A) Publish an annual plan describing how the Department intends to provide or arrange for systems of care for adults and for children, youth, and their families and to serve the needs of priority populations; and

(B) In developing the annual plan, hold public forums in the community to solicit the input of residents of the District with regard to the need for present or additional mental health services and mental health supports.

(Dec. 18, 2001, D.C. Law 14-56, § 105, 48 DCR 7674.)

Temporary Addition of Section. — For of Department of Mental Health Establishment temporary (225 day) addition of section, see § 5 Temporary Amendment Act of 2001 (D.C. Law

14-51, October 30, 2001, law notification 48 DCR 10807).

Emergency legislation. — For temporary (90 day) addition of section, see § 5 of Department of Mental Health Establishment Emergency Amendment Act of 2001 (D.C. Act 14-55, May 2, 2001, 48 DCR 4390).

For temporary (90 day) addition of section, see § 5 of Department of Mental Health Establishment Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-101, July 23, 2001, 48 DCR 7123).

For temporary (90 day) addition of section, see § 105 of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

Legislative history of Law 14-56. — For Law 14-56, see notes following § 7-1131.01.

Editor's notes. — Establishment—District of Columbia State Mental Health Planning Council, see Mayor's Order 2011-147, August 30, 2011 (58 DCR 7984).

CASE NOTES

In general.

Nurse at District of Columbia (D.C.) mental hospital who was suspended for nine days without pay as discipline for her alleged negligence in connection with patient's assault on nurse's coworker stated claim against District under §§ 1983, where she alleged that decision of Director of D.C. Department of Mental Health

to discipline her was based on policy of age and sex discrimination which violated nurse's rights to equal protection and due process; Director was a final policy-maker, so District was liable under §§ 1983 for her policy decisions. *Banks v. District of Columbia*, 377 F.Supp.2d 85, 2005 U.S. Dist. LEXIS 13519 (2005).

§ 7-1131.06. Appointment and duties of Chief Financial Officer.

The Department shall have a Chief Financial Officer ("Department CFO"), who shall be appointed by the Chief Financial Officer of the District of Columbia ("District's CFO") in collaboration with the Director. The Department CFO shall:

- (1) Be qualified by experience and training to carry out accounting, budgeting, and financial management functions;
- (2) Directly report to, be ultimately responsible to, and be under the supervisory direction of the District's CFO, through the Director;
- (3) Engage in the accounting, budgeting, and financial management functions authorized by the District's CFO;
- (4) Serve as a member of the Department's management team;
- (5) Advocate for and advance the policy objectives of the Director, to the extent consistent with the Department CFO's ultimate responsibility to and supervisory control by the District's CFO; and
- (6) Be subject to evaluation, discipline, and transfer by the District's CFO, in collaboration with the Director.

(Dec. 18, 2001, D.C. Law 14-56, § 106, 48 DCR 7674.)

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 6 of Department of Mental Health Establishment Temporary Amendment Act of 2001 (D.C. Law 14-51, October 30, 2001, law notification 48 DCR 10807).

Emergency legislation. — For temporary (90 day) addition of section, see § 6 of Department of Mental Health Establishment Emer-

gency Amendment Act of 2001 (D.C. Act 14-55, May 2, 2001, 48 DCR 4390).

For temporary (90 day) addition of section, see § 6 of Department of Mental Health Establishment Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-101, July 23, 2001, 48 DCR 7123).

For temporary (90 day) addition of section, see § 106 of Mental Health Service Delivery

Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

Legislative history of Law 14-56. — For Law 14-56, see notes following § 7-1131.01.

§ 7-1131.07. Appointment and duties of Chief Clinical Officer.

The Department shall have a Chief Clinical Officer, appointed by the Director, and qualified by experience and training to carry out the following functions:

- (1) Advising the Director on standards, quality assurance, risk management, and clinical practice;
- (2) Advising the Director on a full range of services and functions, including but not limited to clinical services, service needs, and program development; and
- (3) Coordinating the treatment of persons committed to the care of the Department by the court pursuant to § 21-545.

(Dec. 18, 2001, D.C. Law 14-56, § 107, 48 DCR 7674.)

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 7 of Department of Mental Health Establishment Temporary Amendment Act of 2001 (D.C. Law 14-51, October 30, 2001, law notification 48 DCR 10807).

Emergency legislation. — For temporary (90 day) addition of section, see § 7 of Department of Mental Health Establishment Emergency Amendment Act of 2001 (D.C. Act 14-55, May 2, 2001, 48 DCR 4390).

For temporary (90 day) addition of section,

see § 7 of Department of Mental Health Establishment Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-101, July 23, 2001, 48 DCR 7123).

For temporary (90 day) addition of section, see § 107 of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

Legislative history of Law 14-56. — For Law 14-56, see notes following § 7-1131.01.

§ 7-1131.08. Appointment and duties of General Counsel.

(a) The Department shall have a General Counsel or the equivalent, appointed by the Attorney General as an employee of the Office of the Attorney General, after consultation with the Director of the Department. The General Counsel or the equivalent shall:

- (1) Be an attorney admitted to the practice of law in the District of Columbia and qualified by experience and training to advise the Department with respect to legal issues related to its powers and duties;
- (2) Be in the Senior Executive Attorney Service as an at-will employee under the direction and control of the Attorney General;
- (3) Be subject to all applicable provisions of subchapter VIII-B of Chapter 6 of Title 1;
- (4) Have an attorney-client relationship with the Department;
- (5) Advocate vigorously for the Director's positions on legal issues, and if that advocacy poses a conflict with a legal position of the Attorney General for the District of Columbia, seek exemption from the Attorney General's supervision as to that position, in accordance with § 1-608.55(b); and
- (6) Be subject to evaluation, discipline, and transfer by the Attorney General, after consultation with the Director.

(b) This section shall apply as of October 1, 2005.

(Dec. 18, 2001, D.C. Law 14-56, § 108, 48 DCR 7674; Oct. 20, 2005, D.C. Law 16-33, § 3016(a), 52 DCR 7503.)

Effect of amendments. — D.C. Law 16-33 rewrote section, which had read:

“The Department shall have a General Counsel, appointed by the Director with the approval of the Corporation Counsel, which approval shall not be unreasonably withheld. The General Counsel shall:

“(1) Be an attorney admitted to the practice of law in the District of Columbia and qualified by experience and training to advise the Department with respect to legal issues related to its powers and duties;

“(2) Be in the Senior Executive Attorney Service as an at-will employee under the direction and control of the Corporation Counsel;

“(3) Be subject to all applicable provisions of subchapter VIII-B of Chapter 6 of Title 1;

“(4) Have an attorney-client relationship with the Department;

“(5) Advocate vigorously for the Director’s position on legal issues, and if such advocacy poses a conflict with a legal position of the Corporation Counsel, seek exemption from the Corporation Counsel’s supervision as to that position, in accordance with § 1-608.55(b); and

“(6) Be subject to evaluation, discipline, and transfer by the Corporation Counsel, after consultation with the Director, whose views regarding evaluation, discipline, and transfer shall be entitled to great weight.”

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 8 of Department of Mental Health Establishment Temporary Amendment Act of 2001 (D.C. Law 14-51, October 30, 2001, law notification 48 DCR 10807).

Emergency legislation. — For temporary (90 day) addition of section, see § 8 of Department of Mental Health Establishment Emergency Amendment Act of 2001 (D.C. Act 14-55, May 2, 2001, 48 DCR 4390).

For temporary (90 day) addition of section, see § 8 of Department of Mental Health Establishment Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-101, July 23, 2001, 48 DCR 7123).

For temporary (90 day) addition of section, see § 108 of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

For temporary (90 day) amendment of section, see § 3016 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 14-56. — For Law 14-56, see notes following § 7-1131.01.

Legislative history of Law 16-33. — For Law 16-33, see notes following § 7-733.01.

§ 7-1131.09. Appointment and duties of Consumer and Family Affairs Officer.

The Department shall have a Consumer and Family Affairs officer, appointed by the Director, and qualified by experience and training to carry out the following functions:

(1) Ensuring the involvement of consumers of mental health services and their family members in the design, implementation, and evaluation of mental health services and mental health supports;

(2) Serving as a liaison to consumers of mental health services and their family members and personal representatives; and

(3) Promoting the protection of the rights of consumers of mental health services.

(Dec. 18, 2001, D.C. Law 14-56, § 109, 48 DCR 7674.)

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 9 of Department of Mental Health Establishment Temporary Amendment Act of 2001 (D.C. Law 14-51, October 30, 2001, law notification 48 DCR 10807).

Emergency legislation. — For temporary (90 day) addition of section, see § 9 of Department of Mental Health Establishment Emergency Amendment Act of 2001 (D.C. Act 14-55, May 2, 2001, 48 DCR 4390).

For temporary (90 day) addition of section,

see § 9 of Department of Mental Health Establishment Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-101, July 23, 2001, 48 DCR 7123).

For temporary (90 day) addition of section, see § 109 of Mental Health Service Delivery

Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

Legislative history of Law 14-56. — For Law 14-56, see notes following § 7-1131.01.

§ 7-1131.10. Partnership Council.

(a) The Director shall appoint and convene a Partnership Council, consisting of between 15 and 25 people, to advise the Director, upon his or her request, with respect to departmental matters.

(b) The membership of the Partnership Council shall represent the range of interests and perspectives held by adults and children, youth, and their families, as well as the various geographic areas of the District, and shall include at least one person from each ward of the District and 2 representatives from labor unions for departmental workers. At least 51% of the members of the Partnership Council shall be consumers of mental health services or their family members. No members of the Partnership Council shall receive remuneration for their service.

(Dec. 18, 2001, D.C. Law 14-56, § 110, 48 DCR 7674.)

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 10 of Department of Mental Health Establishment Temporary Amendment Act of 2001 (D.C. Law 14-51, October 30, 2001, law notification 48 DCR 10807).

Emergency legislation. — For temporary (90 day) addition of section, see § 10 of Department of Mental Health Establishment Emergency Amendment Act of 2001 (D.C. Act 14-55, May 2, 2001, 48 DCR 4390).

For temporary (90 day) addition of section,

see § 10 of Department of Mental Health Establishment Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-101, July 23, 2001, 48 DCR 7123).

For temporary (90 day) addition of section, see § 110 of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

Legislative history of Law 14-56. — For Law 14-56, see notes following § 7-1131.01.

§ 7-1131.11. System of Mental Health Care Sub-Council.

(a) In conformity with Mayor's Order 99-60, effective March 16, 1999, the Director shall convene a System of Mental Health Care Sub-Council of the District's Intragovernmental Youth Investment Collaborative, for the purpose of developing a system of care for children, youth, and their families. This Sub-Council shall continue to exist in the event that Mayor's Order 99-60 is repealed.

(b) The Sub-Council shall consist of the following individuals:

- (1) Director of the Child and Family Services Agency;
- (2) Director of the Department of Human Services;
- (3) Director of the Department of Health;
- (4) Administrator of the Youth Services Administration;
- (5) Administrator of the Addiction Prevention and Recovery Administration;
- (6) Administrator of the Medical Assistance Administration;
- (7) Administrator of the Mental Retardation and Developmental Disabilities Administration;

- (8) Superintendent of the District of Columbia Public Schools;
- (9) Presiding Judge of the Family Division of Superior Court of the District of Columbia;
- (10) Chair of the District of Columbia Mental Health Planning Council;
- (11) A representative of the designated state protection and advocacy agency established pursuant to the Protection and Advocacy for Mentally Ill Individuals Act of 1986, approved May 23, 1986 (100 Stat. 478; 42 U.S.C. § 10801 et seq.), and section 509 of the Rehabilitation Act of 1973, approved October 29, 1992 (106 Stat. 4430; 29 U.S.C. § 794e); and
- (12) At a minimum, 4 former child or youth consumers of mental health services or family members of child or youth consumers of mental health services.

(Dec. 18, 2001, D.C. Law 14-56, § 111, 48 DCR 7674.)

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 11 of Department of Mental Health Establishment Temporary Amendment Act of 2001 (D.C. Law 14-51, October 30, 2001, law notification 48 DCR 10807).

Emergency legislation. — For temporary (90 day) addition of section, see § 11 of Department of Mental Health Establishment Emergency Amendment Act of 2001 (D.C. Act 14-55, May 2, 2001, 48 DCR 4390).

For temporary (90 day) addition of section,

see § 11 of Department of Mental Health Establishment Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-101, July 23, 2001, 48 DCR 7123).

For temporary (90 day) addition of section, see § 111 of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

Legislative history of Law 14-56. — For Law 14-56, see notes following § 7-1131.01.

§ 7-1131.12. Transfer of functions, property, and personnel.

(a) All real and personal property, Career and Excepted Service, Management Supervisory Service, and trainee positions, assets, records, and obligations, and all unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the powers, duties, functions, operations, and administration of the Commission on Mental Health Services under receivership in *Dixon, et al. v. Williams, et al.*, shall become the property of the Department on December 18, 2001.

(b) All real and personal property, positions, assets, records, and obligations, and all unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the powers, duties, functions, and operations of the “Compact Administrator” of the Interstate Compact on Mental Health as set forth in Chapter 11 of this title, shall become the property of the Department on December 18, 2001.

(c) All positions, real and personal property, assets, records, and obligations, and all unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the powers, duties, functions, and operations of the Department of Health in regulating mental health facilities, mental health services, and mental health supports, shall be transferred to the Department no later than September 30, 2001, in accordance with the terms of the memoranda of agreement executed pursuant to § 7-1131.04(17).

(d) The Department shall recognize and bargain with collective bargaining representatives that have been duly certified by the District of Columbia Public Employees Relations Board and shall assume and be bound by all existing collective bargaining agreements entered into by the Commission on Mental Health Services, if those agreements have been approved by the Council, unless Council approval is not required by law and, during a control year as defined in § 47-393(4), the District of Columbia Financial Responsibility and Management Assistance Authority.

(e) Every employee of the Commission on Mental Health Services shall be transferred to the Department. An employee transferred to the Department shall be transferred in the same classification he or she held at the Commission on Mental Health Services or other department at the time of the transfer. Subject to the District's authority to convert them to the Management Supervisory Service and the Legal Service consistent with Chapter 6 of Title 1, transferred employees shall retain all rights and privileges related to their individual pay and benefits, including retirement status, so long as the employee is continuously employed by the Department or the District government, including any applicable rights and privileges provided for in § 44-906.

(f) The following rules and regulations pertaining to the licensing, certification, and delivery of mental health services and mental health supports shall remain in full force and effect unless and until repealed or superseded by action of the Department of Mental Health:

(1) Chapter 38 of Title 22 of the District of Columbia Municipal Regulations (Community Residence Facilities for Mentally Ill Persons), except that the Department of Mental Health shall perform all functions that Chapter 38 vests in the Commission on Mental Health Services, and shall perform the following functions instead of the Department of Consumer and Regulatory Affairs, the Department of Health, and the Department of Human Services:

(A) Training persons who directly provide mental health services or mental health supports to consumers of mental health services through their employment by a community residence facility;

(B) Certifying that the admission of consumers of mental health services to a mental health community facility is medically necessary;

(C) Making determinations under 22 DCMR § 3826.3;

(D) Receiving written admission criteria under 22 DCMR § 3827.3;

(E) Receiving written reasons for denials of admission under 22 DCMR § 3827.5; and

(F) Licensing mental health community residential facilities as required by 22 DCMR § 3800.5; and

(2) Chapter 46 of Title 29 of the District of Columbia Municipal Regulations (Mobile Community Outreach Treatment Team Services), except that the Department shall have concurrent authority with the Medical Assistance Administration to audit and review records and reports of consumers of mental health services and providers, and shall perform the following functions instead of the Commission on Mental Health Services and the Medical Assistance Administration:

(A) Certifying providers of mobile community outreach treatment team services;

- (B) Operating one mobile community outreach treatment team;
- (C) Authorizing admission and assignment of consumers of mental health services to mobile community outreach treatment teams; and
- (D) Granting approvals and waivers.

(g) The following rules and regulations pertaining to the licensing, certification, and delivery of mental health services and mental health supports shall remain in full force and effect until the Department of Mental Health promulgates standards and procedures in accordance with § 7-1131.14(2)-(4):

(1) Chapter 7 of Title 29 of the District of Columbia Municipal Regulations (Medicaid Day Treatment Programs), except that the Department shall have concurrent authority with the Department of Health to audit and review records of providers, and shall perform the following functions instead of the Department of Human Services:

(A) Certifying Medicaid day treatment programs for consumers of mental health services; and

(B) Granting approvals and waivers;

(2) Chapter 8 of Title 29 of the District of Columbia Municipal Regulations (Free Standing Mental Health Clinics), except that the Department shall have concurrent authority with the Department of Health to audit and review records of providers, and shall perform the following functions instead of the Department of Human Services:

(A) Certifying providers of freestanding mental health clinics;

(B) Determining the qualifications of administrators of freestanding mental health clinics; and

(C) Granting approvals and waivers; and

(3) Section 948 of Title 29 of the District of Columbia Municipal Regulations (Standards for Participation of Residential Treatment Centers for Children and Youth), except that the Department shall have concurrent authority with the Department of Health and the Department of Consumer and Regulatory Affairs to audit and review records of providers, and shall perform the following functions instead of the Department of Human Services:

(A) Certifying residential treatment centers for children and youth; and

(B) Certifying that the admission of consumers of mental health services to residential treatment centers is medically necessary.

(Dec. 18, 2001, D.C. Law 14-56, § 112, 48 DCR 7674.)

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 12 of Department of Mental Health Establishment Temporary Amendment Act of 2001 (D.C. Law 14-51, October 30, 2001, law notification 48 DCR 10807).

Emergency legislation. — For temporary (90 day) addition of section, see § 12 of Department of Mental Health Establishment Emergency Amendment Act of 2001 (D.C. Act 14-55, May 2, 2001, 48 DCR 4390).

For temporary (90 day) addition of section,

see § 12 of Department of Mental Health Establishment Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-101, July 23, 2001, 48 DCR 7123).

For temporary (90 day) addition of section, see § 112 of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

Legislative history of Law 14-56. — For Law 14-56, see notes following § 7-1131.01.

§ 7-1131.13. Prosecution and representation by Attorney General for the District of Columbia.

The Office of Corporation Counsel shall have charge of the prosecution of actions brought in the name of the District of Columbia for emergency detention and commitment of persons requiring receipt of involuntary mental health services and mental health supports. The Office of the Corporation Counsel shall also have charge of any litigation arising out of the execution of the Department's powers and duties.

(Dec. 18, 2001, D.C. Law 14-56, § 113, 48 DCR 7674.)

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 13 of Department of Mental Health Establishment Temporary Amendment Act of 2001 (D.C. Law 14-51, October 30, 2001, law notification 48 DCR 10807).

Emergency legislation. — For temporary (90 day) addition of section, see § 13 of Department of Mental Health Establishment Emergency Amendment Act of 2001 (D.C. Act 14-55, May 2, 2001, 48 DCR 4390).

For temporary (90 day) addition of section, see § 13 of Department of Mental Health Es-

tablishment Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-101, July 23, 2001, 48 DCR 7123).

For temporary (90 day) addition of section, see § 113 of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

Legislative history of Law 14-51. — For D.C. Law 14-51, see notes following § 7-154.

Legislative history of Law 14-56. — For Law 14-56, see notes following § 7-1131.01.

§ 7-1131.14. Rules.

No later than October 1, 2001, and in accordance with Chapter 5 of Title 2, the Department shall issue rules establishing:

(1) Definitions for priority populations, including, but not limited to persons with serious mental illness and children or youth with serious emotional disturbance;

(2) Standards for the operation of mental health services and mental health supports, including, but not limited to requirements regarding:

(A) Qualifications of providers, except those who are required to operate under professional licenses pursuant to subchapter I-A and I-B of Chapter 28 of Title 47;

(B) Accessibility, availability, appropriateness, and cultural competence of the delivery of mental health services and mental health supports; and

(C) Protections for consumers of mental health services that are consistent with Chapter 12A of this title and other applicable law;

(3) Standards and procedures for internal and external monitoring and evaluation of the delivery of mental health services and mental health supports, including, but not limited to standards and procedures for granting certification or full or conditional licensure to providers of mental health services or mental health supports, and limitations on providers of mental health services or mental health supports that are granted conditional licensure;

(4) Standards and procedures for revoking the certifications or licenses, other than professional licenses, of providers of mental health services or mental health supports who do not continue to meet the standards established

by the Department, and procedures for facilitating the ongoing delivery of mental health services and mental health supports to consumers of such providers;

(5)(A) A schedule of civil fines for providers of mental health services and mental health supports operating in the District without licensure or certification by the Department, to the extent that such schedule is not already part of Chapter 38 of Title 22 of the District of Columbia Municipal Regulations.

(B) The Department shall submit the proposed schedule of fines, and any subsequent amendments to the schedule, to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed schedule, in whole or in part, by resolution within this 45-day review period, the proposed schedule shall be deemed approved;

(6) A joint consent for the use of protected mental health information by participating providers that is consistent with 45 C.F.R. Parts 160 and 164 and Chapter 12 of this title.

(Dec. 18, 2001, D.C. Law 14-56, § 114, 48 DCR 7674.)

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 14 of Department of Mental Health Establishment Temporary Amendment Act of 2001 (D.C. Law 14-51, October 30, 2001, law notification 48 DCR 10807).

Emergency legislation. — For temporary (90 day) addition of section, see § 14 of Department of Mental Health Establishment Emergency Amendment Act of 2001 (D.C. Act 14-55, May 2, 2001, 48 DCR 4390).

For temporary (90 day) addition of section, see § 14 of Department of Mental Health Establishment Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-101, July 23, 2001, 48 DCR 7123).

For temporary (90 day) addition of section, see § 114 of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

Legislative history of Law 14-56. — For Law 14-56, see notes following § 7-1131.01

Short title. — Short title: Section 5031 of D.C. Law 19-21 provided that subtitle D of title V of the act may be cited as “Mental Health Services Eligibility Act of 2011”.

Resolutions. — Resolution 14-597, the “Department of Mental Health Civil Infractions Rulemaking Emergency Approval Resolution of 2002”, was approved effective October 25, 2002.

Editor’s notes. — Section 5032 of D.C. Law 19-21 provided:

“Sec. 5032. Mental health eligibility requirements.

“By October 1, 2011, the Department of Mental Health shall issue rules governing eligibility for locally funded mental-health-rehabilitation services. At a minimum, the rules shall limit eligibility to:

“(1) District residents;

“(2) Individuals who are not eligible for Medicaid or Medicare or are not enrolled in any other third-party insurance program; provided, that eligibility or enrollment in the D.C. HealthCare Alliance shall not preclude eligibility for locally funded mental-health-rehabilitation services;

“(3) Individuals 19 years of age and older who live in households with a countable income of less than 200% of the federal poverty level and individuals under 19 years of age who live in households with a countable income of less than 300% of the federal poverty level; and

“(4) Individuals who meet the definition of ‘children or youth with mental health problem’ or ‘persons with mental illness’ as those terms are defined in section 102(1) and (24), respectively, of the Department of Mental Health Establishment Amendment Act of 2001, effective December 18, 2001 (D.C. Law 14-56; D.C. Official Code § 7-1131.02(1) and (24)).”

§ 7-1131.15. Approval of Medicaid State Plan Amendment.

(a) The Department shall have authority to request the Medical Assistance Administration to seek the approval of the federal Health Care Financing Administration for the amendment to the District of Columbia Medicaid State

Plan to add Medicaid rehabilitation services, which was submitted to the Health Care Financing Administration on September 30, 2000.

(b) The Department shall have the authority to request that the Medical Assistance Administration (“MAA”) seek the approval of the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services for an amendment to the Medicaid State Plan that will provide for a per diem reimbursement for inpatient psychiatric treatment for cases where the authorized length of stay exceeds 7 days and the Diagnostic Related Group reimbursement does not exceed the per diem reimbursement schedule for Medicaid-eligible involuntary, emergency psychiatric admissions. The MAA shall submit the amendment to the Medicaid State Plan to the Council for approval by resolution within 30 days of receipt of approval of the amendment from the federal government.

(Dec. 18, 2001, D.C. Law 14-56, § 115, 48 DCR 7674; Oct. 20, 2005, D.C. Law 16-33, § 5122, 52 DCR 7503.)

Effect of amendments. — D.C. Law 16-33 designated the existing text as subsec. (a); and added subsec. (b).

Temporary Addition of Section. — For temporary (225 day) addition of section, see § 15 of Department of Mental Health Establishment Temporary Amendment Act of 2001 (D.C. Law 14-51, October 30, 2001, law notification 48 DCR 10807).

Emergency legislation. — For temporary (90 day) addition of section, see § 15 of Department of Mental Health Establishment Emergency Amendment Act of 2001 (D.C. Act 14-55, May 2, 2001, 48 DCR 4390).

For temporary (90 day) addition of section, see § 15 of Department of Mental Health Establishment Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-101, July 23, 2001, 48 DCR 7123).

For temporary (90 day) addition of section, see § 115 of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

For temporary (90 day) amendment of section, see § 5122 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 7-733.01.

Short title. — Short title of subtitle L of title V of Law 16-33: Section 5121 of D.C. Law 16-33 provided that subtitle L of title V of the act may be cited as Department of Mental Health Acute Care Initiative Act of 2005.

§ 7-1131.16. Transfers to Department of Youth Rehabilitation Services.

Effective October 1, 2006, the Department shall transfer to DYRS all full-time equivalent positions and funding, real and personal property leased or assigned to the Department, assets, records, ongoing obligations, unexpended balances of appropriations, allocations, and other funds available or to be made available relating to the Department's powers, duties, functions and administration of the operations of the mental health units at the Oak Hill Youth Center and the Youth Services Center.

(Dec. 18, 2001, D.C. Law 14-56, § 115a, as added Mar. 2, 2007, D.C. Law 16-192, § 5022(c), 53 DCR 6899.)

Prior Codifications. — 2001 Ed., § 7-1131.15a.

Emergency legislation. — For temporary (90 day) enactments, see §§ 5022(c), 5023 of

Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) enactments, see §§ 5022(c), 5023 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) enactments, see §§ 5022(c), 5023 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

Legislative history of Law 16-192. — For Law 16-192, see notes following § 7-751.16a.

Editor's notes. — Section 5023 of D.C. Law

16-192 provided: "The transfer of funding and authority authorized in section 115a of the Department of Mental Health Establishment Amendment Act of 2001, passed on 2nd reading on July 11, 2006 (Enrolled version of Bill 16-679), does not require the Department of Youth Rehabilitation Services to employ any persons employed by the Department of Mental Health who are providing mental health or related services to youth in the care and custody of the Department of Youth Rehabilitation Services, and the Department of Youth Rehabilitation Services shall not inherit, recognize, or be bound by any collective bargaining agreement involving those persons and negotiated and entered into by Department of Mental Health."

§ 7-1131.17. Youth behavioral health program.

(a) As of October 1, 2012, there is established within the Department, and shall be made available to all child development facilities, public schools, and public charter schools, a program that, at a minimum, provides participants with the tools needed to:

- (1) Identify students who may have unmet behavioral health needs; and
- (2) Refer identified students to appropriate services for behavioral health screenings and behavioral health assessments.

(b)(1) Starting October 1, 2014, completion of the program shall be mandatory for all:

- (A) Teachers in public schools and public charter schools;
- (B) Principals in public schools and public charter schools; and
- (C) Staff employed by child development facilities, who are subject to training or continuing education requirements pursuant to licensing regulations.

(2) In addition to the individuals described in paragraph (1) of this subsection, the Mayor may determine through rulemaking other individuals who shall be required to complete the program.

(3) The Department may make the program available to other interested individuals.

(c) The Department shall keep a record of all participants who complete the program and shall provide the participants with written proof of completion.

(d) If so approved by the Office of the State Superintendent for Education, the program may count towards professional development credits.

(Dec. 18, 2001, D.C. Law 14-56, § 115b, as added June 7, 2012, D.C. Law 19-141, § 402(b), 59 DCR 3083.)

Emergency legislation. — For temporary (90 day) amendment of section 601 of D.C. Law 19-141, see § 7004 of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) amendment of section 601 of D.C. Law 19-141, see § 7004 of Fiscal Year 2013 Budget Support Congressional

Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 19-141. — For history of Law 19-141, see notes under § 7-1131.02.

Editor's notes. — Section 601 of D.C. Law 19-141 provided: "Sec. 601. Applicability. This act shall apply upon the inclusion of its fiscal

effect in an approved budget and financial plan.”

§ 7-1131.18. Behavioral health resource guide.

(a) By March 30, 2013, the Department shall:

(1) Create a behavioral health resource guide for parents and legal guardians that includes information on:

(A) Common signs and symptoms of behavioral health issues facing youth;

(B) The roles and responsibilities of District government agencies in promoting and protecting the behavioral health of youth;

(C) How a parent or legal guardian can obtain a behavioral health screening or assessment for a youth; and

(D) Governmental and non-governmental resources for youth behavioral health programs and services in the District, including contact information; and

(2) Create a behavioral health resource guide for a youth that includes:

(A) Age-appropriate information on common behavioral health issues facing youth;

(B) A description of the impact behavioral health issues can have on a youth’s development; and

(C) Governmental and non-governmental resources for youth behavioral health programs and services in the District, including contact information.

(b) The Department shall make the behavioral health resources guides available to the public both in print and on its website. The Department shall also make the guides available to other District agencies and organizations for distribution.

(c) The Department shall update the behavioral health resource guides as appropriate.

(Dec. 18, 2001, D.C. Law 14-56, § 115c, as added June 7, 2012, D.C. Law 19-141, § 402(b), 59 DCR 3083.)

Emergency legislation. — For temporary (90 day) amendment of section 601 of D.C. Law 19-141, see § 7004 of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) amendment of section 601 of D.C. Law 19-141, see § 7004 of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 19-141. — For history of Law 19-141, see notes under § 7-1131.02.

Editor’s notes. — Section 601 of D.C. Law 19-141 provided: “Sec. 601. Applicability. This act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan.”

§ 7-1131.19. Behavioral Health Ombudsman Program.

(a) As of October 1, 2012, there is established within the Department a Behavioral Health Ombudsman Program (“Ombudsman Program”) to provide District residents with assistance in accessing behavioral health programs and services.

(b)(1) Pursuant to its power set forth in § 7-1131.04(15) and subject to paragraph (2) of this subsection, the Department may contract with a qualified private, community-based, nonprofit corporation, organization, or consortia of organizations, with offices located in the District, to operate the Ombudsman Program. The Department shall establish the criteria that an entity must meet to be selected to operate the Ombudsman Program; provided, that the criteria include:

- (A) A public interest mission;
- (B) Qualified staff and organizational expertise in:
 - (i) Behavioral health services;
 - (ii) Behavioral health coverage under health benefits plans;
 - (iii) Public education and community outreach; and
 - (iv) Conflict resolution;

(C) No direct involvement in the licensing, certification, or accreditation of a behavioral health facility, a health benefits plan, or with a provider of a behavioral health service;

(D) No direct ownership or investment interest in a behavioral health facility, health benefits plan, or any behavioral health service;

(E) No participation in the management of a behavioral health facility, health benefits plan, or any behavioral health service; and

(F) No agreement or arrangement with an owner or operator of a behavioral health service, a behavioral health facility, or health benefits plan that could directly or indirectly result in remuneration, in cash or in kind, to the entity.

(2) If the Department is unable to contract with an outside entity that meets the criteria described in this section, or determines it to be in the best interests of the District, the Department shall operate the Ombudsman Program.

(c)(1) The Ombudsman Program shall be administered by the Behavioral Health Ombudsman, who shall be appointed by the Director of the Department of Mental Health.

(2) The Ombudsman shall be a person:

(A) With substantive experience in the fields of behavioral health and patient advocacy; and

(B) Who is an employee of the nonprofit corporation, organization, or consortia of organizations contracted to operate the Ombudsman Program; provided, that this subparagraph shall not apply if the Department operates the Ombudsman Program pursuant to subsection (b)(2) of this section.

(d) The Ombudsman Program may use volunteers with appropriate training and supervision to assist with counseling, outreach, and other tasks.

(e) The Ombudsman, or his or her designee, shall:

(1) Assist consumers in resolving problems concerning behavioral health providers, behavioral health facilities, and access to behavioral health care services and programs by referring consumers to appropriate regulatory agencies when their problems are within an agency's jurisdiction, guiding consumers through existing complaint processes, and assisting consumers in informally resolving problems through discussions with their providers.

- (2) Educate District residents about behavioral health coverage under:
 - (A) Health benefits plans;
 - (B) Managed care health plans; and
 - (C) Any other behavioral health services options.

(3) Refer individuals, when appropriate, to other District agencies or organizations for assistance with behavioral health services and programs;

(4) Work jointly, when appropriate, with other District agencies or organizations to promote greater access to behavioral health services and programs;

(5) Provide information regarding problems and concerns of consumers of behavioral health services and make recommendations for resolving those problems and concerns to:

- (A) The public;
- (B) Government agencies;
- (C) The Council of the District of Columbia; and
- (D) Any other person or entity that the Ombudsman considers appropriate;

(6) Implement innovative strategies and adopt tools to maximize outreach to District residents;

(7) Identify and help resolve complaints on behalf of consumers and assist consumers with the filing, pursuit, and resolution of formal and informal complaints and appeals through existing processes, including:

- (A) Internal reviews conducted by health benefits plans;
- (B) Grievance and appeals processes for the HealthCare Alliance and Medicaid; and
- (C) External reviews before independent review organizations, and the Department of Mental Health; and

(8) Comment on behalf of District residents on related behavioral health policy legislation and regulations in the District.

(f) Within 30 days of the end of each fiscal year, the Ombudsman shall submit a report to the Department, the Council, and the Mayor, and make it available to the public upon request, regarding the activities of the Ombudsman Program during the prior fiscal year, including:

- (1) An accounting of all activities undertaken;
- (2) An evaluation and analysis of the Ombudsman Program's performance;
- (3) A complete fiscal accounting;
- (4) Issues of concern to District residents; and
- (5) Any recommendations to improve access to behavioral health services.

(g)(1) The Ombudsman shall establish an Advisory Council to consist of members representing at least:

- (A) Consumers;
- (B) Three consumer advocacy organizations;
- (C) The Department of Mental Health;
- (D) The Department of Health Care Finance;
- (E) The Addiction Prevention and Recovery Administration;
- (F) The Child and Family Services Agency;

- (G) The Department of Youth Rehabilitation Services;
- (H) Health benefits plans;
- (I) Health care facilities;
- (J) The Health Care Ombudsman Program;
- (K) Health professionals with expertise in a person's overall social, emotional, and psychological well-being and development;
- (L) The District of Columbia Public Schools; and
- (M) The Public Charter School Board.

(2) The Advisory Council shall meet quarterly to perform, at a minimum, the following functions:

- (A) Advise the Ombudsman on program design and operational issues;
- (B) Recommend changes in the Ombudsman Program; and
- (C) Review data on cases handled by the Ombudsman Program and make recommendations based on that data.

(h)(1) The Ombudsman may review the records of a health-benefits plan, or other provider, pertaining to an individual's medical records; provided, that the Ombudsman received the appropriate consent from the individual or his or her legal representative.

(2) The Ombudsman shall maintain the confidentiality of the records in accordance with all federal and state confidentiality and disclosure laws.

(3) No information or records maintained by the Ombudsman Program shall be disclosed to the public unless the individual or individual's legal representative has provided the appropriate consent for the release of the information or records.

(i) The Ombudsman Program shall enter into a business associate agreement with the Department of Health Care Finance to allow the Ombudsman Program access to information about the Medicaid eligibility status of consumers whom it serves and that requires the Ombudsman Program to safeguard that information pursuant to the Privacy Rule (45 C.F.R. §§ 160 and 164) adopted pursuant to HIPPA.

(j) The Ombudsman shall request and promptly receive, with reasonable notice, the cooperation, assistance, and data from other District agencies, as necessary to enable the Ombudsman Program to investigate a resident's complaint under District or federal law.

(k) No employee, subcontractor, designee, or representative of the Ombudsman Program shall be held liable for the good-faith performance of responsibilities under this section; except, no immunity shall extend to criminal acts or other acts that violate District or federal law.

(l) No person, agency, provider, or facility shall obstruct the Ombudsman, or his or her designee, from the lawful performance of any duty or the exercise of any power.

(m) Nothing in this section shall prohibit a corporation, organization, or consortia of organizations contracted to operate the Ombudsman Program from raising private money through foundation resources to supplement government funds for the Ombudsman Program.”.

(Dec. 18, 2001, D.C. Law 14-56, § 115d, as added June 7, 2012, D.C. Law 19-141, § 402(b), 59 DCR 3083.)

Emergency legislation. — For temporary (90 day) addition of section, see § 5002 of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) amendment of section 601 of D.C. Law 19-141, see § 7004 of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) addition of section, see § 5002 of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

For temporary (90 day) amendment of section 601 of D.C. Law 19-141, see § 7004 of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 19-141. — For history of Law 19-141, see notes under § 7-1131.02.

Editor's notes. — Section 601 of D.C. Law 19-141 provided: "Sec. 601. Applicability. This act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan."

CHAPTER 11B. DEPARTMENT OF MENTAL HEALTH FUNDING ALLOCATION.

Sec.

7-1141.01. Statement of anticipated funding.

§ 7-1141.01. Statement of anticipated funding.

No later than 30 days before the first day of a fiscal year, the Department of Mental Health shall issue to each certified Mental Health Rehabilitation Services provider a statement of anticipated annual funding. The statement shall include language that the anticipated funding level is subject to change based upon actual budget availability and at the discretion of the Department of Mental Health.

(Sept. 18, 2007, D.C. Law 17-20, § 5052, 54 DCR 7052.)

Emergency legislation. — For temporary (90 day) addition, see § 5052 of Fiscal Year 2008 Budget Support Emergency Act of 2007 (D.C. Act 17-74, July 25, 2007, 54 DCR 7549).

For temporary (90 day) addition, see § 5014 of Fiscal Year 2009 Budget Support Emergency Act of 2008 (D.C. Act 17-468, July 28, 2008, 55 DCR 8746).

For temporary (90 day) addition, see § 5011 of Fiscal Year 2010 Budget Support Emergency Act of 2009 (D.C. Act 18-187, August 26, 2009, 56 DCR 7374).

Legislative history of Law 17-20. — Law 17-20, the “Fiscal Year 2008 Budget Support Act of 2007”, was introduced in Council and assigned Bill No. 17-148 which was referred to the Committee of the Whole. The Bill was

adopted on first and second readings on May 15, 2007, and June 5, 2007, respectively. Signed by the Mayor on June 28, 2007, it was assigned Act No. 17-63 and transmitted to both Houses of Congress for its review. D.C. Law 17-20 became effective on September 18, 2007.

Short title. — Short title: Section 5051 of D.C. Law 17-20 provided that subtitle F of title V of the act may be cited as the “Department of Mental Health Funding Allocation Act of 2007”.

Short title: Section 5013 of D.C. Law 17-219 provided that subtitle G of title V of the act may be cited as the “Department of Mental Health Funding Allocation Act of 2008”.

Editor’s notes. — Section 5014 of D.C. Law 17-219 repeated the language of this section.

CHAPTER 12. MENTAL HEALTH INFORMATION.

Subchapter I. Definitions; General Provisions

Sec.

- 7-1201.01. Definitions.
- 7-1201.02. Disclosures prohibited; exceptions.
- 7-1201.03. Personal notes.
- 7-1201.04. General rules governing disclosures.

Subchapter II. Disclosures With the Client's Consent

- 7-1202.01. Disclosures by client authorization.
- 7-1202.02. Form of authorization.
- 7-1202.03. Redisclosure.
- 7-1202.04. Revocation of authorization.
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Subchapter III. Exceptions

- 7-1203.01. Disclosures within a mental health facility or to participating providers.
- 7-1203.02. Disclosures under law.
- 7-1203.03. Disclosures on an emergency basis.
- 7-1203.04. Disclosures for collection of fees.
- 7-1203.05. Disclosures for research, auditing and program evaluation.
- 7-1203.05a. Disclosures to correctional institutions or law enforcement officials.
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Subchapter IV. Court-Related Disclosures

- 7-1204.01. Court-ordered examinations.
- 7-1204.02. Civil commitment proceedings.

Sec.

- 7-1204.03. Court actions.
- 7-1204.04. Redisclosure.
- 7-1204.05. Court records; anonymity of parties.

Subchapter V. Client's Right to Access and Right to Correct Information

- 7-1205.01. Right to access.
- 7-1205.02. Authority to limit access.
- 7-1205.03. Review by independent mental health professional.
- 7-1205.04. Judicial action to compel access.
- 7-1205.05. Right to correct information.

Subchapter VI. Security

- 7-1206.01. Security requirement.
- 7-1206.02. Notice requirement — Employees and agents with access to information.
- 7-1206.03. Notice Requirement — Clients in group sessions.

Subchapter VII. Penalties

- 7-1207.01. Civil liability.
- 7-1207.02. Criminal penalties.

Subchapter VIII. Miscellaneous Provisions

- 7-1208.01. Penalties under other laws.
- 7-1208.02. Prescriptions.
- 7-1208.03. Authority of the Commission on Mental Health.
- 7-1208.04. Prohibition against waiver.
- 7-1208.05. [Reserved].
- 7-1208.06. Conflict with federal law.
- 7-1208.07. Effective date.

Subchapter I. Definitions; General Provisions.

§ 7-1201.01. Definitions.

For purposes of this chapter:

(1) "Administrative information" means a client's name, age, sex, address, identifying number or numbers, dates and character of sessions (individual or group), and fees.

(2) "Client" means any individual who receives or has received professional services from a mental health professional in a professional capacity.

(3) "Client representative" means an individual specifically authorized by the client in writing or by the court as the legal representative of that client.

(4) "Data collector" means a person other than the client, mental health professional and mental health facility who regularly engages, in whole or in part, in the practice of assembling or evaluating client mental health information.

(5) "Diagnostic information" means a therapeutic characterization which is of the type that is found in the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association or any comparable professionally recognized diagnostic manual.

(6) "Disclose" means to communicate any information in any form (written, oral or recorded).

(7) "Group session" means the provision of professional services jointly to more than 1 client in a mental health facility.

(8) "Insurance transaction" means whenever a decision (be it adverse or otherwise) is rendered regarding an individual's eligibility for an insurance benefit or service.

(8A) "Joint consent" means a process established by the Department of Mental Health pursuant to § 7-1131.14(6) to enable all participating providers to rely on a single form in which a consumer of mental health services consents to the use of his or her protected mental health information by participating providers in the Department of Mental Health's organized health care arrangement, for the purposes of delivering treatment, obtaining payment for services and supports rendered, and performing certain administrative operations, such as quality assurance, utilization review, accreditation, and oversight.

(9) "Mental health information" means any written, recorded or oral information acquired by a mental health professional in attending a client in a professional capacity which:

(A) Indicates the identity of a client; and

(B) Relates to the diagnosis or treatment of a client's mental or emotional condition.

(10) "Mental health facility" means any hospital, clinic, office, nursing home, infirmary, provider as defined in § 7-1131.02(27), or similar entity where professional services are provided.

(11) "Mental health professional" means any of the following persons engaged in the provision of professional services:

(A) A person licensed to practice medicine;

(B) A person licensed to practice psychology;

(C) A licensed social worker;

(D) A professional marriage, family, or child counselor;

(E) A rape crisis or sexual abuse counselor who has undergone at least 40 hours of training and is under the supervision of a licensed social worker, nurse, psychiatrist, psychologist, or psychotherapist;

(F) A licensed nurse who is a professional psychiatric nurse; or

(G) Any person reasonably believed by the client to be a mental health professional within the meaning of subparagraphs (A) through (F) of this paragraph.

(11A) "Organized health care arrangement" means an organized system of health care in which more than one provider participates, and in which the participating providers hold themselves out to the public as participating in a joint arrangement, and either:

(A) Participate in joint activities that include utilization review under Chapter 8 of Title 44, in which health care decisions by participating providers

are reviewed by other participating providers or by a third party on their behalf; or

(B) Participate in quality assessment and improvement activities under Chapter 8 of Title 44, in which mental health services or mental health supports provided by participating providers are assessed by other participating providers or by a third party on their behalf.

(11B) "Participating provider" means a provider of mental health services or mental health supports who, through participation in the joint consent promulgated by the Department of Mental Health pursuant to § 7-1131.14(6), joins the organized health care arrangement created by the Department of Mental Health.

(12) "Person" means any governmental organization or agency or part thereof, individual, firm, partnership, copartnership, association or corporation.

(13) "Personal notes" means mental health information regarding a client which is limited to:

(A) Mental health information disclosed to the mental health professional in confidence by other persons on condition that such information not be disclosed to the client or other persons; and

(B) The mental health professional's speculations.

(14) "Professional services" means any form of diagnosis or treatment relating to a mental or emotional condition that is provided by a mental health professional.

(15) "Third-party payor" means any person who provides accident and sickness benefits or medical, surgical or hospital benefits whether on an indemnity, reimbursement, service or prepaid basis, including, but not limited to, insurance carriers, governmental agencies and employers.

(Mar. 3, 1979, D.C. Law 2-136, § 101, 25 DCR 5055; Mar. 25, 1986, D.C. Law 6-99, § 1101(b), 33 DCR 729; July 22, 1992, D.C. Law 9-126, § 3, 39 DCR 3824; May 23, 1995, D.C. Law 10-257, § 401(a), 42 DCR 53; Dec. 18, 2001, D.C. Law 14-56, § 116(f)(1), 48 DCR 7674.)

Section references. — This section is referred to in §§ 4-1321.02, 7-1201.04, 12-301, 14-307, 21-522, 21-527, 21-562, and 21-2047.

Prior Codifications. — 1981 Ed., § 6-2001. 1973 Ed., § 6-1611.

Effect of amendments. — D.C. Law 14-56 added pars. (8A), (11A), and (11B); and inserted "provider as defined in § 7-1131.02(27)," after "infirmary," in par. (10).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(a) of D.C. Mental Health Information Act of 1978 Temporary Amendment Act of 1986 (D.C. Law 6-174, February 24, 1987, law notification 34 DCR 1710).

For temporary (225 day) amendment of section, see § 16(f)(1) of Department of Mental Health Establishment Temporary Amendment Act of 2001 (D.C. Law 14-51, October 30, 2001, law notification 48 DCR 10807).

Emergency legislation. — For temporary (90 day) amendment of section, see § 16(f)(1) of Department of Mental Health Establishment Emergency Amendment Act of 2001 (D.C. Act 14-55, May 2, 2001, 48 DCR 4390).

For temporary (90 day) amendment of section, see § 16(f)(1) of Department of Mental Health Establishment Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-101, July 23, 2001, 48 DCR 7123).

For temporary (90 day) amendment of section, see § 116(f)(1) of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

Legislative history of Law 2-136. — Law 2-136, the "District of Columbia Mental Health Information Act of 1978," was introduced in Council and assigned Bill No. 2-144, which was referred to the Committee on the Judiciary. The

Bill was adopted on first, amended first, second amended first, and second readings on July 11, 1978, July 25, 1978, September 19, 1978 and October 3, 1978, respectively. Signed by the Mayor on November 1, 1978, it was assigned Act No. 2-292 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-99. — Law 6-99, the “District of Columbia Health Occupations Revision Act of 1985,” was introduced in Council and assigned Bill No. 6-317, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 17, 1985, and January 14, 1986, respectively. Signed by the Mayor on January 28, 1986, it was assigned Act No. 6-127 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-126. — Law 9-126, the “District of Columbia Health Occupations Revision Act of 1985 Professional Counselors Amendment Act of 1992,” was introduced

in Council and assigned Bill No. 9-197, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on April 7, 1992, and May 6, 1992, respectively. Signed by the Mayor on May 28, 1992, it was assigned Act No. 9-210 and transmitted to both Houses of Congress for its review. D.C. Law 9-126 became effective on July 22, 1992.

Legislative history of Law 10-257. — Law 10-257, the “Anti-Sexual Abuse Act of 1994,” was introduced in Council and assigned Bill No. 10-87, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 28, 1994, it was assigned Act No. 10-385 and transmitted to both Houses of Congress for its review. D.C. Law 10-257 became effective May 23, 1995.

Legislative history of Law 14-56. — For Law 14-56, see notes following § 7-1131.01.

§ 7-1201.02. Disclosures prohibited; exceptions.

(a) Except as specifically authorized by subchapter II, III, or IV of this chapter, no mental health professional, mental health facility, data collector or employee or agent of a mental health professional, mental health facility or data collector shall disclose or permit the disclosure of mental health information to any person, including an employer.

(b) Except as specifically authorized by subchapter II or IV of this chapter, no client in a group session shall disclose or permit the disclosure of mental health information relating to another client in the group session to any person.

(c) No violation of subsection (a) or (b) of this section occurs until a single act or series of acts taken together amount to a disclosure of mental health information.

(Mar. 3, 1979, D.C. Law 2-136, § 102, 25 DCR 5055.)

Prior Codifications. — 1981 Ed., § 6-2002. 1973 Ed., § 6-1612.

Legislative history of Law 2-136. — For legislative history of D.C. Law 2-136, see Historical and Statutory Notes following § 7-1201.01.

Transfer of Functions. — Pursuant to Re-

organization Plan No. 5 of 1996, the function of providing mental health services to inmates in Department of Corrections facilities provided by the Bureau of Correctional Services, Commission on Mental Health Services, were transferred to the Department of Corrections.

CASE NOTES

ANALYSIS

Court proceedings.
Federal officers and boards.
In general.

Court proceedings.

Any error in quashing defendant’s subpoena

to obtain medical and psychiatric records of witness and former codefendant, allegedly to test witness’ competency and to assist with cross-examination, was harmless; other persons overheard disputed statements by witness, defendant did not challenge witness’ competency to testify, and witness testified about previous hospitalization for psychiatric prob-

lem. D.C. Code 1981, §§ 6-2002, 6-2031 to 6-2033. *Jackson v. United States*, 623 A.2d 571, 1993 D.C. App. LEXIS 76 (1993), writ of certiorari denied by 510 U.S. 1030, 114 S. Ct. 649, 126 L. Ed. 2d 607, 1993 U.S. LEXIS 7931, 62 U.S.L.W. 3409 (1993).

In child neglect proceeding based on mother's alleged mental illness and drug abuse, trial judge had statutory authority, over mother's objection, to "waive" her physician-patient privilege with respect to past professional evaluations of her mental condition. D.C. Code 1981, § 2-1355. *In re O.L.*, 584 A.2d 1230, 1990 D.C. App. LEXIS 159 (1990).

Federal officers and boards.

District of Columbia Mental Health Information Act did not extend scope of physician-patient privilege to Veterans Administration's release of veteran's medical records to United States Attorney's office; veterans' records statute establishes comprehensive scheme to regulate disclosure of veterans' records and is intended to occupy field in that regard, and even if federal enactment did not occupy regulatory field so to leave no room for local regulation, doctrine of federal preemption would still prevent application of District of Columbia statute to bar release of federally held records, as imposing such a ban could substantially impede federal activities or place prohibition on federal Government. D.C. Code 1981, §§ 6-2001 to 6-2062; 38 U.S.C. § 3301. *Doe v. Stephens*, 851 F.2d 1457, 1988 U.S. App. LEXIS 9681 (C.A.D.C. 1988).

Remand was necessary for determination whether Veterans Administration's disclosure of veteran's psychiatric records violated District of Columbia Mental Health Information Act [D.C. Code 1981, §§ 6-2001 to 6-2062]. *Doe v. Di Genova*, 779 F.2d 74, 1985 U.S. App. LEXIS 24914 (C.A.D.C. 1985).

Action for declaratory and injunctive relief brought against prosecutor, Veterans Administration officials and other law enforcement officials by plaintiff, a target for criminal prosecution in a pending grand jury investigation of fraudulent collection of unemployment compensation, who alleged violation of his rights as result of VA's release of his psychiatric records without notice pursuant to subpoena was not rendered moot as result of representations made to district court to effect that no use had been made of the VA records in connection with the grand jury matter and that law enforcement officers contemplated no future acquisition or use of the records where prosecutor reserved one circumstance in which he might seek to obtain plaintiff's psychiatric records again, where VA supplied no indication that it

would not again, upon official request, release plaintiff's files without affording him notice and opportunity to object and where plaintiff's request for declaratory relief, might be deemed to imply a request for damages. *Doe v. Harris*, 696 F.2d 109, 1982 U.S. App. LEXIS 23229 (C.A.D.C. 1982).

District of Columbia Mental Health Information Act does not apply to Veterans Administration's release of medical records; Veterans' Records Statute establishes comprehensive scheme to regulate disclosure of veterans' records and is intended to occupy field in that regard, and District of Columbia statute would impede federal activities by imposing affirmative duty upon Veterans' Administration and providing civil and criminal penalties for violations. D.C. Code 1981, §§ 6-2061, 6-2062; 5 U.S.C. § 552a; 38 U.S.C. §§ 3301, 3302. *Doe v. Di Genova*, 642 F. Supp. 624, 1986 U.S. Dist. LEXIS 22139 (1986), affirmed in part and remanded in part by 851 F.2d 1457, 271 U.S. App. D.C. 230, 1988 U.S. App. LEXIS 9681 (1988).

In general.

Disclosure of mental health records were permitted to extent necessary to initiate or seek civil commitment when trial court has ordered mental health examination or where party places his or her own mental or emotional condition in issue. D.C. Code 1981, §§ 6-2002, 6-2031 to 6-2033. *Jackson v. United States*, 623 A.2d 571, 1993 D.C. App. LEXIS 76 (1993), writ of certiorari denied by 510 U.S. 1030, 114 S. Ct. 649, 126 L. Ed. 2d 607, 1993 U.S. LEXIS 7931, 62 U.S.L.W. 3409 (1993).

The issue of what mental health records should be made available to the defense pits two strong societal interests against each other. One is the interest in insuring that those accused of criminal acts receive a fair trial, while the other is the interest in insuring that persons with mental health problems can seek treatment without fear of disclosure of statements made during the course of that treatment. *In re T.M.*, 120 WLR 2541 (Super. Ct. 1992).

Where the complainant sought counseling at a rape crisis center not as a result of a generalized mental health problem, but rather specifically in connection with the incident which formed the basis for the petition, if the records of her statements to the center about the incident, as well as her sexual history, were subject to disclosure, there could be little doubt that her willingness to seek help from the mental health professionals at the center in the future would have been chilled, and that others who have been the victims of sexual offenses would be hesitant to go to the center for help. *In re T.M.*, 120 WLR 2541 (Super. Ct. 1992).

§ 7-1201.03. Personal notes.

If a mental health professional makes personal notes regarding a client, such personal notes shall not be maintained as a part of the client's record of mental health information. Notwithstanding any other provision of this chapter, access to such personal notes shall be strictly and absolutely limited to the mental health professional and shall not be disclosed except to the degree that the personal notes or the information contained therein are needed in litigation brought by the client against the mental health professional on the grounds of professional malpractice or disclosure in violation of this section.

(Mar. 3, 1979, D.C. Law 2-136, § 103, 25 DCR 5055.)

Section references. — This section is referred to in § 7-1205.01.

Prior Codifications. — 1981 Ed., § 6-2003. 1973 Ed., § 6-1613.

Legislative history of Law 2-136. — For legislative history of D.C. Law 2-136, see Historical and Statutory Notes following § 7-1201.01.

§ 7-1201.04. General rules governing disclosures.

(a) Upon disclosure of any of the client's mental health information pursuant to subchapter II, III, or IV of this chapter, a notation shall be entered and maintained with the client's record of mental health information which includes:

- (1) The date of the disclosure;
- (2) The name of the recipient of the mental health information; and
- (3) A description of the contents of the disclosure.

(b) All disclosures of mental health information, except on an emergency basis as provided in § 7-1203.03, shall be accompanied by a statement to the effect that: The unauthorized disclosure of mental health information violates the provisions of the District of Columbia Mental Health Information Act of 1978 (§§ 7-1201.01 to 7-1207.02). Disclosures may only be made pursuant to a valid authorization by the client or as provided in title III or IV of that Act. The Act provides for civil damages and criminal penalties for violations.

(Mar. 3, 1979, D.C. Law 2-136, § 104, 25 DCR 5055.)

Prior Codifications. — 1981 Ed., § 6-2004. 1973 Ed., § 6-1614.

Legislative history of Law 2-136. — For

legislative history of D.C. Law 2-136, see Historical and Statutory Notes following § 7-1201.01.

Subchapter II. Disclosures With the Client's Consent.

§ 7-1202.01. Disclosures by client authorization.

Except as provided in § 7-1202.06, a mental health professional, mental health facility, data collector or employee or agent of a mental health professional, mental health facility or data collector shall disclose mental health information and a client in a group session may disclose mental health information upon the voluntary written authorization of the person or persons who have the power to authorize disclosure under § 7-1202.05.

(Mar. 3, 1979, D.C. Law 2-136, § 201, DCR 5055.)

Section references. — This section is referred to in §§ 7-1202.02 and 7-1202.03.

Prior Codifications. — 1981 Ed., § 6-2011. 1973 Ed., § 6-1615.

Legislative history of Law 2-136. — For legislative history of D.C. Law 2-136, see Historical and Statutory Notes following § 7-1201.01.

§ 7-1202.02. Form of authorization.

(a) Any written authorization which authorizes disclosure pursuant to § 7-1202.01 shall:

(1) Specify the nature of the information to be disclosed, the type of persons authorized to disclose such information, to whom the information may be disclosed and the specific purposes for which the information may be used both at the time of the disclosure and at any time in the future;

(2) Advise the client of his right to inspect his record of mental health information;

(3) State that the consent is subject to revocation, except where an authorization is executed in connection with a client's obtaining a life or noncancellable or guaranteed renewable health insurance policy, in which case the authorization shall be specific as to its expiration date which shall not exceed 2 years from the date of the policy; or where an authorization is executed in connection with the client's obtaining any other form of health insurance in which case the authorization shall be specific as to its expiration date which shall not exceed 1 year from the date of the policy;

(4) Be signed by the person or persons authorizing the disclosure; and

(5) Contain the date upon which the authorization was signed and the date on which the authorization will expire, which shall be no longer than 365 days from the date of authorization.

(b) Repealed.

(c) A copy of such authorization shall:

(1) Be provided to the client and the person authorizing the disclosure;

(2) Accompany all such disclosures; and

(3) Be included in the client's record of mental health information.

(Mar. 3, 1979, D.C. Law 2-136, § 202, 25 DCR 5055; Dec. 18, 2001, D.C. Law 14-56, § 116(f)(2), 48 DCR 7674; Dec. 10, 2009, D.C. Law 18-88, § 204(a), 56 DCR 7413.)

Section references. — This section is referred to in § 7-1202.04.

Prior Codifications. — 1981 Ed., § 6-2012. 1973 Ed., § 6-1616.

Effect of amendments. — D.C. Law 14-56, in subsec. (a)(5), inserted "and the date on which the authorization will expire, which shall be no longer than 60 days from the date of authorization"; and repealed subsec. (b) which had read:

"(b) Any authorization executed pursuant to subsection (a) of this section shall apply only to the disclosure of mental health information

which exists as of the date of the authorization."

D.C. Law 18-88, in subsec. (a)(5), substituted "365 days" for "60 days".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 16(f)(2) of Department of Mental Health Establishment Temporary Amendment Act of 2001 (D.C. Law 14-51, October 30, 2001, law notification 48 DCR 10807).

Emergency legislation. — For temporary (90 day) amendment of section, see § 16(f)(2) of Department of Mental Health Establishment

Emergency Amendment Act of 2001 (D.C. Act 14-55, May 2, 2001, 48 DCR 4390).

For temporary (90 day) amendment of section, see § 16(f)(2) of Department of Mental Health Establishment Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-101, July 23, 2001, 48 DCR 7123).

For temporary (90 day) amendment of section, see § 116(f)(2) of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

For temporary (90 day) amendment of section, see § 204(a) of Omnibus Public Safety and Justice Emergency Amendment Act of 2009 (D.C. Act 18-181, August 6, 2009, 56 DCR 6903).

For temporary (90 day) amendment of section, see § 204(a) of Omnibus Public Safety and Justice Congressional Review Emergency

Amendment Act of 2009 (D.C. Act 18-227, October 21, 2009, 56 DCR 8668).

Legislative history of Law 2-136. — For legislative history of D.C. Law 2-136, see Historical and Statutory Notes following § 7-1201.01.

Legislative history of Law 14-56. — For Law 14-56, see notes following § 7-1131.01.

Legislative history of Law 18-88. — Law 18-88, the “Omnibus Public Safety and Justice Amendment Act of 2009”, as introduced in Council and assigned Bill No. 18-151, which was referred to the Committee on Public Safety and the Judiciary. The bill as adopted on first and second readings on June 30, 2009, and July 31, 2009, respectively. Signed by the Mayor on August 26, 2009, it was assigned Act No. 18-189 and transmitted to both Houses of Congress for its review. D.C. Law 18-88 became effective on December 10, 2009.

§ 7-1202.03. Redisclosure.

Mental health information disclosed pursuant to this subchapter cannot be further disclosed by the recipient without authorization as provided in § 7-1202.01.

(Mar. 3, 1979, D.C. Law 2-136, § 203, 25 DCR 5055.)

Prior Codifications. — 1981 Ed., § 6-2013. 1973 Ed., § 6-1617.

Legislative history of Law 2-136. — For

legislative history of D.C. Law 2-136, see Historical and Statutory Notes following § 7-1201.01.

§ 7-1202.04. Revocation of authorization.

Except as provided in § 7-1202.02(a)(3), the person or persons who authorize a disclosure may revoke an authorization by providing a written revocation to the recipient named in the authorization and to the mental health professional, mental health facility or data collector authorized to disclose mental health information. The revocation of authorization shall be effective upon receipt. After the effective revocation date, no mental health information may be disclosed pursuant to the authorization. However, mental health information previously disclosed may be used for the purposes stated in the written authorization.

(Mar. 3, 1979, D.C. Law 2-136, § 204, 25 DCR 5055.)

Prior Codifications. — 1981 Ed., § 6-2014. 1973 Ed., § 6-1618.

Legislative history of Law 2-136. — For

legislative history of D.C. Law 2-136, see Historical and Statutory Notes following § 7-1201.01.

§ 7-1202.05. Power to grant authorization.

(a) When a client is 18 years of age or over, the client or client representative shall have the power to authorize disclosures.

(b) When a client is under the age of 18, but beyond the age of 14, disclosures

which require authorization may only be authorized by the joint written authorization of the client and the client's parent or legal guardian. When a client is less than 14 years of age, disclosures which require authorization may only be authorized by the client's parent or legal guardian. However, if the client's parent or legal guardian has not expressed consent to the mental health professional regarding the client's receipt of professional services, the client may, by written authorization, consent without any authorization from his parent or legal guardian.

(Mar. 3, 1979, D.C. Law 2-136, § 205, 25 DCR 5055.)

Section references. — This section is referred to in § 7-1202.01.

Prior Codifications. — 1981 Ed., § 6-2015.
1973 Ed., § 6-1619.

Legislative history of Law 2-136. — For legislative history of D.C. Law 2-136, see Historical and Statutory Notes following § 7-1201.01.

§ 7-1202.06. Authority of mental health professional to limit authorized disclosures.

(a) The mental health professional primarily responsible for the diagnosis or treatment of a client may refuse to disclose or limit disclosure of the client's mental health information even though such mental health information is disclosable by virtue of a valid authorization; provided, that:

(1) Such mental health professional reasonably believes that such refusal or limitation on disclosure is necessary to protect the client from a substantial risk of imminent psychological impairment or to protect the client or another individual from a substantial risk of imminent and serious physical injury; and

(2) The mental health professional notifies the person or persons who authorized the disclosure, in writing, of: (A) the refusal or limitation on disclosure; (B) the reasons for such refusal or limitation; and (C) the remedies under this chapter; provided, further, that, in an insurance transaction, the mental health professional shall inform the insurer that the authorized disclosure was refused or limited.

(b) In the event the disclosure is limited by the mental health professional pursuant to subsection (a) of this section, the person or persons who authorized the disclosure may designate an independent mental health professional who shall be in substantially the same or greater professional class as the mental health professional who initially limited disclosure and who shall be permitted to review the client's record of mental health information. The independent mental health professional may authorize disclosure in whole or in part if, after a complete review of the client's record of mental health information, the independent mental health professional determines that the disclosure does not pose to the client a substantial risk of imminent psychological impairment or pose a substantial risk of imminent and serious physical injury to the client or another individual.

(c) A person who has taken action to achieve disclosure in accordance with subsection (b) of this section may institute an action in the Superior Court of the District of Columbia to compel the disclosure of all or any part of the record of the client's mental health information which was not disclosed by the mental

health professionals. An action instituted under this subsection shall be brought within 6 months of the denial, in whole or in part, of the disclosure by the independent mental health professional or the denial, in whole or in part, of disclosure to the independent mental health professional by the mental health professional. In the event that a person is indigent and is unable to obtain the services of an independent mental health professional, he may institute an action in the Superior Court of the District of Columbia, without regard to the provisions of subsection (b) of this section; provided, that the action is brought within 6 months of the denial, in whole or in part, of the disclosure by the mental health professional. If the person who instituted the action establishes that he executed a valid authorization which was transmitted to the mental health professional prior to the denial of disclosure by such mental health professional, the burden of proof shall then be placed upon the mental health professional to establish, by a preponderance of the evidence, that the denial of disclosure was in conformity with paragraphs (1) and (2) of subsection (a) of this section.

(d) Any refusal or limitation on disclosure shall be noted in the client's record of mental health information including, but not limited to, the names of the mental health professionals involved, the date of the refusal or limitation, the requested disclosure and the actual disclosure, if any.

(e) This section shall not apply to disclosures under § 21-562 (concerning the disclosure of records of a client hospitalized in a public hospital for a mental illness) or court-related disclosures under subchapter IV of this chapter.

(Mar. 3, 1979, D.C. Law 2-136, § 206, 25 DCR 5055.)

Section references. — This section is referred to in § 7-1202.01.

Prior Codifications. — 1981 Ed., § 6-2016. 1973 Ed., § 6-1620.

Legislative history of Law 2-136. — For legislative history of D.C. Law 2-136, see Historical and Statutory Notes following § 7-1201.01.

§ 7-1202.07. Limited disclosure to 3rd-party payors.

(a) A mental health professional or mental health facility may disclose to a 3rd-party payor mental health information necessary to determine the client's entitlement to, or the amount of, payment benefits for professional services rendered; provided, that the disclosure is pursuant to a valid authorization, or for participating providers, a joint consent, and that the information to be disclosed is limited to:

- (1) Administrative information;
- (2) Diagnostic information;
- (3) The status of the client (voluntary or involuntary);
- (4) The reason for admission or continuing treatment; and
- (5) A prognosis limited to the estimated time during which treatment might continue.

(b) In the event the 3rd-party payor questions the client's entitlement to or the amount of payment benefits following disclosure under subsection (a) of this section, the 3rd-party payor may, pursuant to a valid authorization, or for

participating providers, a joint consent, request an independent review of the client's record of mental health information by a mental health professional or professionals. Mental health information disclosed for the purpose of review shall not be disclosed to the 3rd-party payor.

(Mar. 3, 1979, D.C. Law 2-136, § 207, 25 DCR 5055; Dec. 18, 2001, D.C. Law 14-56, § 116(f)(3), 48 DCR 7674.)

Prior Codifications. — 1981 Ed., § 6-2017, 1973 Ed., § 6-1621.

Effect of amendments. — D.C. Law 14-56, in subsecs. (a) and (b), substituted “, or for participating providers, a joint consent,” after “a valid authorization”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 16(f)(3) of Department of Mental Health Establishment Temporary Amendment Act of 2001 (D.C. Law 14-51, October 30, 2001, law notification 48 DCR 10807).

Emergency legislation. — For temporary (90 day) amendment of section, see § 16(f)(3) of Department of Mental Health Establishment Emergency Amendment Act of 2001 (D.C. Act 14-55, May 2, 2001, 48 DCR 4390).

For temporary (90 day) amendment of section, see § 16(f)(3) of Department of Mental Health Establishment Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-101, July 23, 2001, 48 DCR 7123).

For temporary (90 day) amendment of section, see § 116(f)(3) of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

Legislative history of Law 2-136. — For legislative history of D.C. Law 2-136, see Historical and Statutory Notes following § 7-1201.01.

Legislative history of Law 14-56. — For Law 14-56, see notes following § 7-1131.01.

CASE NOTES

Application and operation of acts of federal regulations.

In view of facts that application of District of Columbia law controlling release to insurance carriers of sensitive patient information would require carriers to disobey federal regulations, in that regulations provided that carriers would adjudicate claims while District of Columbia statute provides that further patient information over and above that explicitly permitted to be disclosed to carriers be disclosed to an independent reviewer, and that another

District of Columbia statute prohibits construing former statute to necessarily require or excuse noncompliance with any provision of any federal law, federal regulation controlled release to insurance carriers of sensitive patient information, so that carriers were entitled to information requested. D.C. Code 1981, §§ 6-2017, 6-2017(a), 6-2075. *District of Columbia Institute of Mental Hygiene v. Medical Service of D.C.*, 474 A.2d 831, 1984 D.C. App. LEXIS 375 (1984).

Subchapter III. Exceptions.

§ 7-1203.01. Disclosures within a mental health facility or to participating providers.

(a) Mental health information may be disclosed to other individuals employed at the individual mental health facility when and to the extent necessary to facilitate the delivery of professional services to the client.

(b) Mental health information may be disclosed by participating providers to other participating providers when and to the extent necessary to facilitate the delivery of mental health services and mental health supports to the consumer.

(Mar. 3, 1979, D.C. Law 2-136, § 301, 25 DCR 5055; Dec. 18, 2001, D.C. Law 14-56, § 116(f)(4), 48 DCR 7674.)

Prior Codifications. — 1981 Ed., § 6-2021. 1973 Ed., § 6-1622.

Effect of amendments. — D.C. Law 14-56, in the heading, substituted “facility.” for “facility or to participating providers.”; designated subsec. (a); and added subsec. (b).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 16(f)(4) of Department of Mental Health Establishment Temporary Amendment Act of 2001 (D.C. Law 14-51, October 30, 2001, law notification 48 DCR 10807).

Emergency legislation. — For temporary (90 day) amendment of section, see § 16(f)(4) of Department of Mental Health Establishment Emergency Amendment Act of 2001 (D.C. Act 14-55, May 2, 2001, 48 DCR 4390).

For temporary (90 day) amendment of section, see § 16(f)(4) of Department of Mental Health Establishment Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-101, July 23, 2001, 48 DCR 7123).

For temporary (90 day) amendment of section, see § 116(f)(4) of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

Legislative history of Law 2-136. — For legislative history of D.C. Law 2-136, see Historical and Statutory Notes following § 7-1201.01.

Legislative history of Law 14-56. — For Law 14-56, see notes following § 7-1131.01.

§ 7-1203.02. Disclosures under law.

Mental health information may be disclosed by a mental health professional or mental health facility where necessary and, to the extent necessary:

- (1) To meet the requirements of § 21-586 (concerning financial responsibility for the care of hospitalized persons);
- (2) To meet the compulsory reporting provisions of District or federal law that seek to promote human health and safety, including § 4-1371.12; or
- (3) For the purposes of and in accordance with Chapter 2A of this title [§ 7-251 seq.].

(Mar. 3, 1979, D.C. Law 2-136, § 302, 25 DCR 5055; Oct. 3, 2001, D.C. Law 14-28, § 4616, 48 DCR 6981; Dec. 4, 2010, D.C. Law 18-273, § 204(a), 57 DCR 7171.)

Prior Codifications. — 1981 Ed., § 6-2022. 1973 Ed., § 6-1623.

Effect of amendments. — D.C. Law 14-28, inserted “, including § 4-1317.12”.

D.C. Law 18-273 rewrote the section, which had read as follows: “Mental health information may be disclosed by a mental health professional or mental health facility where necessary and, to the extent necessary, to meet the requirements of § 21-586 (concerning financial responsibility for the care of hospitalized persons) or to meet the compulsory reporting provisions of District or federal law which attempt to promote human health and safety, including § 4-1317.12.”

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 16 of Child Fatality Review Committee Establishment Temporary Act of 2001 (D.C. Law 14-20, September 6, 2001, law notification 48 DCR 9090).

Emergency legislation. — For temporary (90 day) amendment of section, see § 16 of Child Fatality Review Committee Establish-

ment Emergency Act of 2001 (D.C. Act 14-40, April 25, 2001, 48 DCR 5917).

For temporary (90 day) amendment of section, see § 16 of Child Fatality Review Committee Establishment Legislative Review Emergency Act of 2001 (D.C. Act 14-82, July 9, 2001, 48 DCR 6355).

For temporary (90 day) amendment of section, see § 204(a) of Data-Sharing and Information Coordination Emergency Amendment Act of 2010 (D.C. Act 18-530, August 6, 2010, 57 DCR 8099).

For temporary (90 day) amendment of section, see § 204(a) of Data-Sharing and Information Coordination Congressional Review Emergency Amendment Act of 2010 (D.C. Act 18-582, October 20, 2010, 57 DCR 10118).

Legislative history of Law 2-136. — For legislative history of D.C. Law 2-136, see Historical and Statutory Notes following § 7-1201.01.

Legislative history of Law 14-28. — For Law 14-28, see notes following § 7-219.

Legislative history of Law 18-273. — For Law 18-273, see notes following § 7-131.

§ 7-1203.03. Disclosures on an emergency basis.

(a) To the extent the disclosure of mental health information is not otherwise authorized by this chapter, mental health information may be disclosed, on an emergency basis, to one or more of the following if the mental health professional reasonably believes that such disclosure is necessary to initiate or seek emergency hospitalization of the client under § 21-521 or to otherwise protect the client or another individual from a substantial risk of imminent and serious physical injury:

- (1) The client's spouse, parent, or legal guardian;
- (2) A duly accredited officer or agent of the District of Columbia in charge of public health;
- (3) The Department of Mental Health;
- (4) A provider as that term is defined in § 7-1131.02(27);
- (5) The District of Columbia Pretrial Services Agency;
- (6) The Court Services and Offender Supervision Agency;
- (7) A court exercising jurisdiction over the client as a result of a pending criminal proceeding;
- (8) Emergency medical personnel;
- (9) An officer authorized to make arrests in the District of Columbia; or
- (10) An intended victim.

(a-1) Any disclosure of mental health information under this section shall be limited to the minimum necessary to initiate or seek emergency hospitalization of the client under § 21-521 or to otherwise protect the client or another individual from a substantial risk of imminent and serious physical injury.

(b) Mental health information disclosed to the Metropolitan Police Department pursuant to this section shall be maintained separately and shall not be made a part of any permanent police record. Such mental health information shall not be further disclosed except as a court-related disclosure pursuant to subchapter IV of this chapter. If no judicial action relating to the disclosure under this section is pending at the expiration of the statute of limitations governing the nature of the judicial action, the mental health information shall be destroyed. If a judicial action relating to the disclosure under this section is pending at the expiration of the statute of limitations, the mental health information shall be destroyed at the termination of the judicial action.

(c) Mental health information contained in a certification of incapacity, pursuant to § 21-2204, may be disclosed to initiate a proceeding pursuant to Chapter 20 of Title 21.

(Mar. 3, 1979, D.C. Law 2-136, § 303, 25 DCR 5055; Dec. 18, 2001, D.C. Law 14-56, § 116(f)(5), 48 DCR 7674; Oct. 22, 2008, D.C. Law 17-249, § 4, 55 DCR 9206; Dec. 10, 2009, D.C. Law 18-88, § 204(b), 56 DCR 7413.)

Section references. — This section is referred to in § 7-1201.04.

Prior Codifications. — 1981 Ed., § 6-2023. 1973 Ed., § 6-1624.

Effect of amendments. — D.C. Law 17-249 added subsec. (c).

D.C. Law 18-88 rewrote subsec. (a) and

added subsec. (a-1). Prior to amendment, subsec. (a) read as follows: "(a) Mental health information may be disclosed, on an emergency basis, to 1 or more of the following: The client's spouse, parent, legal guardian, a duly accredited officer or agent of the District of Columbia in charge of public health, the Department of

Mental Health, a provider as defined in § 7-1131.02(27), an officer authorized to make arrests in the District of Columbia or an intended victim if the mental health professional reasonably believes that such disclosure is necessary to initiate or seek emergency hospitalization of the client under § 21-521 or to otherwise protect the client or another individual from a substantial risk of imminent and serious physical injury.”

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 16(f)(5) of Department of Mental Health Establishment Temporary Amendment Act of 2001 (D.C. Law 14-51, October 30, 2001, law notification 48 DCR 10807).

Emergency legislation. — For temporary (90 day) amendment of section, see § 16(f)(5) of Department of Mental Health Establishment Emergency Amendment Act of 2001 (D.C. Act 14-55, May 2, 2001, 48 DCR 4390).

For temporary (90 day) amendment of section, see § 16(f)(5) of Department of Mental Health Establishment Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-101, July 23, 2001, 48 DCR 7123).

For temporary (90 day) amendment, see § 4 of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2008 (D.C. Act 17-492, August 4, 2008, 55 DCR 9167).

For temporary (90 day) amendment of section, see § 204(b) of Omnibus Public Safety and Justice Emergency Amendment Act of 2009 (D.C. Act 18-181, August 6, 2009, 56 DCR 6903).

For temporary (90 day) amendment of section, see § 204(b) of Omnibus Public Safety and Justice Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-227, October 21, 2009, 56 DCR 8668).

Legislative history of Law 2-136. — For legislative history of D.C. Law 2-136, see Historical and Statutory Notes following § 7-1201.01.

Legislative history of Law 17-249. — Law 17-249, the “Health-Care Decisions for Persons with Developmental Disabilities Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-432 which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on July 1, 2008, and July 15, 2008, respectively. Signed by the Mayor on August 4, 2008, it was assigned Act No. 17-496 and transmitted to both Houses of Congress for its review. D.C. Law 17-249 became effective on October 22, 2008.

Legislative history of Law 18-88. — For Law 18-88, see notes following § 7-1202.02.

§ 7-1203.04. Disclosures for collection of fees.

(a) A mental health professional or mental health facility may disclose the administrative information necessary for the collection of his or its fee from the client to a person authorized by the mental health professional or mental health facility for the collection of a fee from such client if the client or client representative has received a written notification that the fee is due and has failed to arrange for payment with the mental health professional or mental health facility within a reasonable time after such notification.

(b) In the event of a claim in any civil action for the collection of such a fee, no additional mental health information shall be disclosed in litigation, except to the extent necessary:

(1) To respond to a motion of the client or client representative for greater specificity; or

(2) To dispute a defense or counterclaim.

(Mar. 3, 1979, D.C. Law 2-136, § 304, 25 DCR 5055.)

Prior Codifications. — 1981 Ed., § 6-2024. 1973 Ed., § 6-1625.

Legislative history of Law 2-136. — For

legislative history of D.C. Law 2-136, see Historical and Statutory Notes following § 7-1201.01.

§ 7-1203.05. Disclosures for research, auditing and program evaluation.

In addition to the disclosures authorized pursuant to Chapter 2A of this title [§ 7-251 et seq.], a mental health professional or mental health facility may disclose mental health information to qualified personnel, if necessary, for the purpose of conducting scientific research or management audits, financial audits or program evaluation of the mental health professional or mental health facility; provided, that such personnel have demonstrated and provided assurances, in writing, of their ability to insure compliance with the requirements of this chapter. Such personnel shall not identify, directly or indirectly, an individual client in any reports of such research, audit or evaluation, or otherwise disclose client identities in any manner; except, that de-identified data may be shared in accordance with the Health Insurance Portability and Accountability Act of 1996, approved August 21, 1996 (110 Stat. 1936; 42 U.S.C. § 1320d et seq.).

(Mar. 3, 1979, D.C. Law 2-136, § 305, 25 DCR 5055; Dec. 4, 2010, D.C. Law 18-273, § 204(b), 57 DCR 7171.)

Prior Codifications. — 1981 Ed., § 6-2025. 1973 Ed., § 6-1626.

Effect of amendments. — D.C. Law 18-273 inserted “In addition to the disclosures authorized pursuant to Chapter 2A of this title, a mental health professional”; and inserted “any manner; except, that de-identified data may be shared in accordance with the Health Insurance Portability and Accountability Act of 1996, approved August 21, 1996 (110 Stat. 1936; 42 U.S.C. § 1320d et seq.).”

Emergency legislation. — For temporary (90 day) amendment of section, see § 204(b) of Data-Sharing and Information Coordination

Emergency Amendment Act of 2010 (D.C. Act 18-530, August 6, 2010, 57 DCR 8099).

For temporary (90 day) amendment of section, see § 204(b) of Data-Sharing and Information Coordination Congressional Review Emergency Amendment Act of 2010 (D.C. Act 18-582, October 20, 2010, 57 DCR 10118).

Legislative history of Law 2-136. — For legislative history of D.C. Law 2-136, see Historical and Statutory Notes following § 7-1201.01.

Legislative history of Law 18-273. — For Law 18-273, see notes following § 7-131.

§ 7-1203.05a. Disclosures to correctional institutions or law enforcement officials.

(a) A mental health professional or mental health facility may disclose to a correctional institution or a law enforcement official having lawful custody of an individual mental health information about the individual to facilitate the delivery of mental health services and mental health supports to the individual.

(b) Any disclosure of mental health information under this section shall be limited to the minimum necessary to facilitate the delivery of mental health services and mental health supports.

(Mar. 3, 1979, D.C. Law 2-136, § 305a, as added Dec. 10, 2009, D.C. Law 18-88, § 204(c), 56 DCR 7413.)

Emergency legislation. — For temporary (90 day) addition, see § 204(c) of Omnibus Public Safety and Justice Emergency Amend-

ment Act of 2009 (D.C. Act 18-181, August 6, 2009, 56 DCR 6903).

For temporary (90 day) addition, see § 204(c)

of Omnibus Public Safety and Justice Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-227, October 21, 2009, 56 DCR 8668).

Legislative history of Law 18-88. — For Law 18-88, see notes following § 7-1202.02.

§ 7-1203.06. Redisdisclosure.

Mental health information disclosed pursuant to this subchapter shall not be redisdisclosed except as specifically authorized by subchapter II, III or IV of this chapter or for the purposes of and in accordance with Chapter 2A of this title [§ 7-251 et seq.].

(Mar. 3, 1979, D.C. Law 2-136, § 306, 25 DCR 5055; Dec. 4, 2010, D.C. Law 18-273, § 204(c), 57 DCR 7171.)

Prior Codifications. — 1981 Ed., § 6-2026. 1973 Ed., § 6-1627.

Effect of amendments. — D.C. Law 18-273 substituted “of this chapter or for the purposes of and in accordance with Chapter 2A of this title” for “of this chapter”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 204(c) of Data-Sharing and Information Coordination Emergency Amendment Act of 2010 (D.C. Act 18-530, August 6, 2010, 57 DCR 8099).

For temporary (90 day) amendment of section, see § 204(c) of Data-Sharing and Information Coordination Congressional Review Emergency Amendment Act of 2010 (D.C. Act 18-582, October 20, 2010, 57 DCR 10118).

Legislative history of Law 2-136. — For legislative history of D.C. Law 2-136, see Historical and Statutory Notes following § 7-1201.01.

Legislative history of Law 18-273. — For Law 18-273, see notes following § 7-131.

Subchapter IV. Court-Related Disclosures.

§ 7-1204.01. Court-ordered examinations.

Except as provided elsewhere by law, mental health information acquired by a mental health professional pursuant to a court-ordered examination may be disclosed in a manner provided by rules of court or by order of the court.

(Mar. 3, 1979, D.C. Law 2-136, § 401, 25 DCR 5055; Dec. 18, 2001, D.C. Law 14-56, § 116(f)(6), 48 DCR 7674.)

Prior Codifications. — 1981 Ed., § 6-2031. 1973 Ed., § 6-1628.

Effect of amendments. — D.C. Law 14-56, inserted “or by order of the court.”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 16(f)(6) of Department of Mental Health Establishment Temporary Amendment Act of 2001 (D.C. Law 14-51, October 30, 2001, law notification 48 DCR 10807).

Emergency legislation. — For temporary (90 day) amendment of section, see § 16(f)(6) of Department of Mental Health Establishment

Emergency Amendment Act of 2001 (D.C. Act 14-55, May 2, 2001, 48 DCR 4390).

For temporary (90 day) amendment of section, see § 16(f)(6) of Department of Mental Health Establishment Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-101, July 23, 2001, 48 DCR 7123).

Legislative history of Law 2-136. — For legislative history of D.C. Law 2-136, see Historical and Statutory Notes following § 7-1201.01.

Legislative history of Law 14-56. — For Law 14-56, see notes following § 7-1131.01.

CASE NOTES

In general.

Disclosure of mental health records were permitted to extent necessary to initiate or seek

civil commitment when trial court has ordered mental health examination or where party places his or her own mental or emotional

condition in issue. D.C. Code 1981, §§ 6-2002, 6-2031 to 6-2033. *Jackson v. United States*, 623 A.2d 571, 1993 D.C. App. LEXIS 76 (1993), writ

of certiorari denied by 510 U.S. 1030, 114 S. Ct. 649, 126 L. Ed. 2d 607, 1993 U.S. LEXIS 7931, 62 U.S.L.W. 3409 (1993).

§ 7-1204.02. Civil commitment proceedings.

Mental health information may be disclosed by a mental health professional when and to the extent necessary to initiate or seek civil commitment proceedings under § 21-541.

(Mar. 3, 1979, D.C. Law 2-136, § 402, 25 DCR 5055.)

Prior Codifications. — 1981 Ed., § 6-2032. 1973 Ed., § 6-1629.

Legislative history of Law 2-136. — For

legislative history of D.C. Law 2-136, see Historical and Statutory Notes following § 7-1201.01.

CASE NOTES

In general.

Disclosure of mental health records were permitted to extent necessary to initiate or seek civil commitment when trial court has ordered mental health examination or where party places his or her own mental or emotional

condition in issue. D.C. Code 1981, §§ 6-2002, 6-2031 to 6-2033. *Jackson v. United States*, 623 A.2d 571, 1993 D.C. App. LEXIS 76 (1993), writ of certiorari denied by 510 U.S. 1030, 114 S. Ct. 649, 126 L. Ed. 2d 607, 1993 U.S. LEXIS 7931, 62 U.S.L.W. 3409 (1993).

§ 7-1204.03. Court actions.

(a) Mental health information may be disclosed in a civil or administrative proceeding in which the client or the client representative or, in the case of a deceased client, any party claiming or defending through or a beneficiary of the client, initiates his mental or emotional condition or any aspect thereof as an element of the claim or defense.

(b)(1) In addition to mental health information that is disclosed when a defendant's competence or mental health is at issue or when otherwise authorized by law, in a criminal proceeding, the court may order the disclosure, or redisclosure, of a defendant or offender's mental health information when and only to the extent necessary to monitor the defendant or offender's compliance with a condition of pretrial release, probation, parole, supervised release, or diversion agreement that the defendant or offender obtain or comply with mental health treatment ordered by a court or the U.S. Parole Commission.

(2) Any disclosure or redisclosure of mental health information ordered under this subsection shall be limited to the minimum necessary to monitor the individual's compliance and the court's order shall specify the information that may be disclosed or redisclosed.

(Mar. 3, 1979, D.C. Law 2-136, § 403, 25 DCR 5055; Dec. 10, 2009, D.C. Law 18-88, § 204(d), 56 DCR 7413.)

Prior Codifications. — 1981 Ed., § 6-2033. 1973 Ed., § 6-1630.

Effect of amendments. — D.C. Law 18-88

designated the existing text as subsec. (a); and added subsec. (b).

Emergency legislation. — For temporary

(90 day) amendment of section, see § 204(d) of Omnibus Public Safety and Justice Emergency Amendment Act of 2009 (D.C. Act 18-181, August 6, 2009, 56 DCR 6903).

For temporary (90 day) amendment of section, see § 204(d) of Omnibus Public Safety and Justice Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-227, October 21, 2009, 56 DCR 8668).

Legislative history of Law 2-136. — For legislative history of D.C. Law 2-136, see Historical and Statutory Notes following § 7-1201.01.

Legislative history of Law 18-88. — For Law 18-88, see notes following § 7-1202.02.

CASE NOTES

In general.

Any error in quashing defendant's subpoena to obtain medical and psychiatric records of witness and former codefendant, allegedly to test witness' competency and to assist with cross-examination, was harmless; other persons overheard disputed statements by witness, defendant did not challenge witness' competency to testify, and witness testified about previous hospitalization for psychiatric problem. D.C. Code 1981, §§ 6-2002, 6-2031 to 6-2033. *Jackson v. United States*, 623 A.2d 571, 1993 D.C. App. LEXIS 76 (1993), writ of certiorari denied by 510 U.S. 1030, 114 S. Ct. 649, 126 L. Ed. 2d 607, 1993 U.S. LEXIS 7931, 62 U.S.L.W. 3409 (1993).

126 L. Ed. 2d 607, 1993 U.S. LEXIS 7931, 62 U.S.L.W. 3409 (1993).

Disclosure of mental health records were permitted to extent necessary to initiate or seek civil commitment when trial court has ordered mental health examination or where party places his or her own mental or emotional condition in issue. D.C. Code 1981, §§ 6-2002, 6-2031 to 6-2033. *Jackson v. United States*, 623 A.2d 571, 1993 D.C. App. LEXIS 76 (1993), writ of certiorari denied by 510 U.S. 1030, 114 S. Ct. 649, 126 L. Ed. 2d 607, 1993 U.S. LEXIS 7931, 62 U.S.L.W. 3409 (1993).

§ 7-1204.04. Redisclosure.

Redisclosure of any mental health information disclosed pursuant to this subchapter shall be governed by order of the court or, if no order is issued, by the rules of the Superior Court of the District of Columbia.

(Mar. 3, 1979, D.C. Law 2-136, § 404, 25 DCR 5055.)

Prior Codifications. — 1981 Ed., § 6-2034. 1973 Ed., § 6-1631.

Legislative history of Law 2-136. — For

legislative history of D.C. Law 2-136, see Historical and Statutory Notes following § 7-1201.01.

§ 7-1204.05. Court records; anonymity of parties.

A client, client representative or any other party in a civil, criminal or administrative action, in which mental health information has been or will be disclosed, shall have the right to move the court to denominate, style or caption the names of all parties as "John Doe" or otherwise protect the anonymity of all of the parties.

(Mar. 3, 1979, D.C. Law 2-136, § 405, 25 DCR 5055.)

Prior Codifications. — 1981 Ed., § 6-2035. 1973 Ed., § 6-1632.

Legislative history of Law 2-136. — For

legislative history of D.C. Law 2-136, see Historical and Statutory Notes following § 7-1201.01.

CASE NOTES

In general.

The operations of the Commission of Mental Health are involved, as a preliminary but nec-

essary phase, of any mental health case pending in the Superior Court and it follows that, pursuant to § 6-2073, the provisions of the

Mental Health Information Act are inapplicable. In re Watts, 110 WLR 2581 (Super. Ct. 1982).

Subchapter V. Client's Right to Access and Right to Correct Information.

§ 7-1205.01. Right to access.

Except as provided in this subchapter and in § 7-1201.03, a mental health professional, mental health facility or data collector shall permit any client or client representative, upon written request, to inspect and duplicate the client's record of mental health information maintained by the mental health professional, mental health facility or data collector within 30 days from the date of receipt of the request. A mental health professional, responsible for the diagnosis or treatment of the client, shall have the opportunity to discuss the mental health information with the client or client representative at the time of such inspection. In the case of a request to a data collector for disclosure of mental health information pursuant to this section, the data collector shall grant access either: (1) directly to the requestor; or (2) indirectly by providing the mental health information to a mental health professional designated by the requestor. If the mental health professional designated by the requestor is not the person who disclosed the mental health information to the data collector, he shall be in substantially the same or greater professional class as the mental health professional who disclosed the mental health information to the data collector.

(Mar. 3, 1979, D.C. Law 2-136, § 501, 25 DCR 5055.)

Section references. — This section is referred to in § 7-1205.04.

Prior Codifications. — 1981 Ed., § 6-2041. 1973 Ed., § 6-1633.

Legislative history of Law 2-136. — For legislative history of D.C. Law 2-136, see Historical and Statutory Notes following § 7-1201.01.

§ 7-1205.02. Authority to limit access.

A mental health professional or mental health facility may limit the disclosure of portions of a client's record of mental health information to the client or client representative only if the mental health professional primarily responsible for the diagnosis or treatment of such client reasonably believes that such limitation is necessary to protect the client from a substantial risk of imminent psychological impairment or to protect the client or another individual from a substantial risk of imminent and serious physical injury. The mental health professional shall notify the client or client representative if the mental health professional does not grant complete access.

(Mar. 3, 1979, D.C. Law 2-136, § 502, 25 DCR 5055.)

Prior Codifications. — 1981 Ed., § 6-2042. 1973 Ed., § 6-1634.

Legislative history of Law 2-136. — For

legislative history of D.C. Law 2-136, see Historical and Statutory Notes following § 7-1201.01.

§ 7-1205.03. Review by independent mental health professional.

In the event that disclosure of the client's information is limited, the client or client representative may designate an independent mental health professional who shall be in substantially the same or greater professional class as the mental health professional who initially limited disclosure and who shall be permitted to review the client's record of mental health information. The independent mental health professional shall permit the client or client representative to inspect and duplicate those portions of the client's record of mental health information which, in his judgment, do not pose a substantial risk of imminent psychological impairment to the client or pose a substantial risk of imminent and serious physical injury to the client or another individual. In the event that the independent mental health professional allows the client to inspect and duplicate additional portions of the client's record of mental health information, the mental health professional primarily responsible for the diagnosis or treatment of the client shall have the opportunity to discuss the information with the client at the time of transmittal, examination and duplication of information.

(Mar. 3, 1979, D.C. Law 2-136, § 503, 25 DCR 5055.)

Section references. — This section is referred to in § 7-1205.04.

Prior Codifications. — 1981 Ed., § 6-2043.
1973 Ed., § 6-1635.

Legislative history of Law 2-136. — For legislative history of D.C. Law 2-136, see Historical and Statutory Notes following § 7-1201.01.

§ 7-1205.04. Judicial action to compel access.

A client or client representative who has taken action in accordance with this subchapter may institute an action in the Superior Court of the District of Columbia to compel access to all or any part of the client's record of mental health information which was denied by the mental health professional. An action initiated under this section shall be brought within 6 months of the denial of access, in whole or in part, by the independent mental health professional. In the event that a person is indigent and is unable to obtain the services of an independent mental health professional, he may institute an action in the Superior Court of the District of Columbia, without regard to the provisions of § 7-1205.03; provided, that the action is brought within 6 months of the denial of access, in whole or in part, by the mental health professional. If the person who instituted the action establishes that he made a request for access in compliance with § 7-1205.01, the burden of proof shall be placed upon the mental health professional to establish by a preponderance of the evidence that the denial of access was in conformity with subchapter V of this chapter.

(Mar. 3, 1979, D.C. Law 2-136, § 504, 25 DCR 5055.)

Prior Codifications. — 1981 Ed., § 6-2044.
1973 Ed., § 6-1636.

Legislative history of Law 2-136. — For legislative history of D.C. Law 2-136, see His-

torical and Statutory Notes following § 7-1201.01.

§ 7-1205.05. Right to correct information.

(a) The mental health professional, mental health facility and data collector shall maintain the client's mental health information in an accurate and complete manner.

(b) In the event that the client or client representative questions the accuracy or completeness of the client's record of mental health information, he may, within 15 days of the date of access, submit a written amendment of reasonable length to the mental health professional, mental health facility or data collector, as the case may be. The mental health professional, mental health facility or data collector shall either:

(1) Amend the client's mental health information record in accordance with the proposed amendment; or

(2) Include the proposed amendment as part of the client's mental health information record; provided, that the client may, at his option, withdraw the proposed amendment or file a more concise statement of disagreement as a substitute for the proposed amendment.

(c) If the requested amendment was adopted, the mental health professional, mental health facility or data collector shall either promptly transmit the client's amended record or the requested amendment to all persons to whom the client's unamended mental health information had been disclosed or promptly inform the client of the names and addresses of such persons not receiving the amended record or the requested amendment. In any such disclosure made pursuant to this subsection, the mental health professional, mental health facility or data collector, as the case may be, may also include a statement of reasons for not adopting the requested amendment.

(Mar. 3, 1979, D.C. Law 2-136, § 505, 25 DCR 5055.)

Section references. — This section is referred to in § 7-1207.01.

Prior Codifications. — 1981 Ed., § 6-2045. 1973 Ed., § 6-1637.

Legislative history of Law 2-136. — For legislative history of D.C. Law 2-136, see Historical and Statutory Notes following § 7-1201.01.

Subchapter VI. Security.

§ 7-1206.01. Security requirement.

Mental health professionals, mental health facilities and data collectors shall maintain records of mental health information in a secure manner as to effectuate the purposes of this chapter. Any entity that receives mental health information shall have appropriate administrative, technical, and physical safeguards in place to protect the confidentiality of mental health information and shall promptly notify the Department of Mental Health in writing of any unauthorized disclosure or use of mental health information.

(Mar. 3, 1979, D.C. Law 2-136, § 601, 25 DCR 5055; Dec. 4, 2010, D.C. Law 18-273, § 204(d), 57 DCR 7171.)

Prior Codifications. — 1981 Ed., § 6-2051. 1973 Ed., § 6-1638.

Effect of amendments. — D.C. Law 18-273 added the second sentence.

Emergency legislation. — For temporary (90 day) amendment of section, see § 204(d) of Data-Sharing and Information Coordination Emergency Amendment Act of 2010 (D.C. Act 18-530, August 6, 2010, 57 DCR 8099).

For temporary (90 day) amendment of sec-

tion, see § 204(d) of Data-Sharing and Information Coordination Congressional Review Emergency Amendment Act of 2010 (D.C. Act 18-582, October 20, 2010, 57 DCR 10118).

Legislative history of Law 2-136. — For legislative history of D.C. Law 2-136, see Historical and Statutory Notes following § 7-1201:01.

Legislative history of Law 18-273. — For Law 18-273, see notes following § 7-131.

§ 7-1206.02. Notice requirement — Employees and agents with access to information.

Mental health professionals, mental health facilities and data collectors shall provide employees and agents who have lawful access to mental health information in the course of their employment with a written statement of the requirement of maintaining the security of records of mental health information and of the penalties provided in this chapter for unauthorized disclosure.

(Mar. 3, 1979, D.C. Law 2-136, § 602, 25 DCR 5055.)

Prior Codifications. — 1981 Ed., § 6-2052. 1973 Ed., § 6-1639.

Legislative history of Law 2-136. — For

legislative history of D.C. Law 2-136, see Historical and Statutory Notes following § 7-1201:01.

§ 7-1206.03. Notice Requirement — Clients in group sessions.

Mental health professionals shall provide clients in a group session with a written statement of the prohibition against the unauthorized disclosure of mental health information and the penalties provided in this chapter for unauthorized disclosure.

(Mar. 3, 1979, D.C. Law 2-136, § 603, 25 DCR 5055.)

Prior Codifications. — 1981 Ed., § 6-2053. 1973 Ed., § 6-1640.

Legislative history of Law 2-136. — For

legislative history of D.C. Law 2-136, see Historical and Statutory Notes following § 7-1201:01.

Subchapter VII. Penalties.

§ 7-1207.01. Civil liability.

(a) Except for violations of § 7-1205.05(a), any person who negligently violates the provisions of this chapter shall be liable in an amount equal to the damages sustained by the client plus the costs of the action and reasonable attorney's fees.

(b) Except for violations of § 7-1205.05(a), any person who willfully or intentionally violates the provisions of this chapter shall be liable in damages sustained by the client in an amount not less than \$1,000 plus the costs of the action and reasonable attorney's fees.

(c) Either party is entitled to trial by jury, upon request.

(Mar. 3, 1979, D.C. Law 2-136, § 701, 25 DCR 5055.)

Prior Codifications. — 1981 Ed., § 6-2061. 1973 Ed., § 6-1641.

Legislative history of Law 2-136. — For

legislative history of D.C. Law 2-136, see Historical and Statutory Notes following § 7-1201.01.

CASE NOTES

Application and operation of federal regulations.

District of Columbia Mental Health Information Act does not apply to Veterans Administration's release of medical records; Veterans' Records Statute establishes comprehensive scheme to regulate disclosure of veterans' records and is intended to occupy field in that regard, and District of Columbia statute would

impede federal activities by imposing affirmative duty upon Veterans' Administration and providing civil and criminal penalties for violations. D.C. Code 1981, §§ 6-2061, 6-2062; 5 U.S.C. § 552a; 38 U.S.C. §§ 3301, 3302. *Doe v. Di Genova*, 642 F. Supp. 624, 1986 U.S. Dist. LEXIS 22139 (1986), affirmed in part and remanded in part by 851 F.2d 1457, 271 U.S. App. D.C. 230, 1988 U.S. App. LEXIS 9681 (1988).

§ 7-1207.02. Criminal penalties.

(a) Except for violations of subchapter V of this chapter, any person who willfully violates the provisions of this chapter shall be guilty of a misdemeanor and such violator shall be fined not more than \$1,000 or imprisoned for not more than 60 days, or both.

(b) Any person who knowingly obtains mental health information from a mental health professional, mental health facility or data collector, under false pretenses or through deception, shall be guilty of a misdemeanor and shall be fined not more than \$5,000 or imprisoned not more than 90 days, or both.

(Mar. 3, 1979, D.C. Law 2-136, § 702, 25 DCR 5055.)

Prior Codifications. — 1981 Ed., § 6-2062. 1973 Ed., § 6-1642.

Legislative history of Law 2-136. — For

legislative history of D.C. Law 2-136, see Historical and Statutory Notes following § 7-1201.01.

CASE NOTES

In general.

Remand was necessary for determination whether Veterans Administration's disclosure of veteran's psychiatric records violated District of Columbia Mental Health Information Act [D.C. Code 1981, §§ 6-2001 to 6-2062]. *Doe v. Di Genova*, 779 F.2d 74, 1985 U.S. App. LEXIS 24914 (C.A.D.C. 1985).

District of Columbia Mental Health Information Act does not apply to Veterans Administration's release of medical records; Veterans' Records Statute establishes comprehensive

scheme to regulate disclosure of veterans' records and is intended to occupy field in that regard, and District of Columbia statute would impede federal activities by imposing affirmative duty upon Veterans' Administration and providing civil and criminal penalties for violations. D.C. Code 1981, §§ 6-2061, 6-2062; 5 U.S.C. § 552a; 38 U.S.C. §§ 3301, 3302. *Doe v. Di Genova*, 642 F. Supp. 624, 1986 U.S. Dist. LEXIS 22139 (1986), affirmed in part and remanded in part by 851 F.2d 1457, 271 U.S. App. D.C. 230, 1988 U.S. App. LEXIS 9681 (1988).

Subchapter VIII. Miscellaneous Provisions.

§ 7-1208.01. Penalties under other laws.

Any civil liability or criminal penalty imposed for violation of this chapter is, in addition to and not in lieu of, any civil or administrative remedy, penalty or

sanction otherwise authorized by law. This chapter and the penalties prescribed for violations of this chapter shall not supersede but shall supplement all statutes of the District government and the United States government in which similar conduct is prohibited or regulated.

(Mar. 3, 1979, D.C. Law 2-136, § 801, 25 DCR 5055.)

Prior Codifications. — 1981 Ed., § 6-2071. legislative history of D.C. Law 2-136, see Historical and Statutory Notes following § 7-1201.01.
1973 Ed., § 6-1643.

Legislative history of Law 2-136. — For

§ 7-1208.02. Prescriptions.

Nothing in this chapter shall be construed as limiting or interfering with District of Columbia, state or federal regulation and monitoring of the handling and dispensing of prescription drugs.

(Mar. 3, 1979, D.C. Law 2-136, § 802, 25 DCR 5055.)

Prior Codifications. — 1981 Ed., § 6-2072. legislative history of D.C. Law 2-136, see Historical and Statutory Notes following § 7-1201.01.
1973 Ed., § 6-1644.

Legislative history of Law 2-136. — For

§ 7-1208.03. Authority of the Commission on Mental Health.

Nothing in this chapter shall be construed to apply to the operations of the Commission on Mental Health.

(Mar. 3, 1979, D.C. Law 2-136, § 803, 25 DCR 5055.)

Prior Codifications. — 1981 Ed., § 6-2073. legislative history of D.C. Law 2-136, see Historical and Statutory Notes following § 7-1201.01.
1973 Ed., § 6-1645.

Legislative history of Law 2-136. — For

CASE NOTES

Construction and application.

The operations of the Commission on Mental Health are involved, as a preliminary but necessary phase, of any mental health case pending in the Superior Court and it follows that,

pursuant to this section, the provisions of the Mental Health Information Act are inapplicable. In re Watts, 110 WLR 2581 (Super. Ct. 1982).

§ 7-1208.04. Prohibition against waiver.

Any consent or agreement purporting to waive the provisions of this chapter is hereby declared to be against public policy and void.

(Mar. 3, 1979, D.C. Law 2-136, § 804, 25 DCR 5055.)

Prior Codifications. — 1981 Ed., § 6-2074. legislative history of D.C. Law 2-136, see Historical and Statutory Notes following § 7-1201.01.
1973 Ed., § 6-1646.

Legislative history of Law 2-136. — For

§ 7-1208.05. [Reserved].

§ 7-1208.06. Conflict with federal law.

Nothing in this chapter shall be construed or applied to necessarily require or excuse noncompliance with any provision of any federal law.

(Mar. 3, 1979, D.C. Law 2-136, § 806, 25 DCR 5055.)

Prior Codifications. — 1981 Ed., § 6-2075.
1973 Ed., § 6-1647.
Legislative history of Law 2-136. — For

legislative history of D.C. Law 2-136, see Historical and Statutory Notes following § 7-1201.01.

CASE NOTES

In general.

Remand was necessary for determination whether Veterans Administration's disclosure of veteran's psychiatric records violated District of Columbia Mental Health Information Act [D.C. Code 1981, §§ 6-2001 to 6-2062]. *Doe v. Di Genova*, 779 F.2d 74, 1985 U.S. App. LEXIS 24914 (C.A.D.C. 1985).

In view of facts that application of District of Columbia law controlling release to insurance carriers of sensitive patient information would require carriers to disobey federal regulations, in that regulations provided that carriers would adjudicate claims while District of Columbia statute provides that further patient

information over and above that explicitly permitted to be disclosed to carriers be disclosed to an independent reviewer, and that another District of Columbia statute prohibits construing former statute to necessarily require or excuse noncompliance with any provision of any federal law, federal regulation controlled release to insurance carriers of sensitive patient information, so that carriers were entitled to information requested. D.C. Code 1981, §§ 6-2017, 6-2017(a), 6-2075. *District of Columbia Institute of Mental Hygiene v. Medical Service of D.C.*, 474 A.2d 831, 1984 D.C. App. LEXIS 375 (1984).

§ 7-1208.07. Effective date.

The provisions of this chapter shall take effect pursuant to § 1-206.02(c)(1) and shall govern all mental health information regardless of when such information came into existence. However, the provisions of this chapter which create liabilities shall only apply to acts or failures to act which occur on or after the effective date.

(Mar. 3, 1979, D.C. Law 2-136, § 807(a), 25 DCR 5055.)

Prior Codifications. — 1981 Ed., § 6-2076.
1973 Ed., § 6-1648.
Legislative history of Law 2-136. — For

legislative history of D.C. Law 2-136, see Historical and Statutory Notes following § 7-1201.01.

CHAPTER 12A. MENTAL HEALTH CONSUMERS' RIGHTS PROTECTION.

| Sec. | Sec. |
|--|---|
| 7-1231.01. Short title. | 7-1231.08. Administration of medication. |
| 7-1231.02. Definitions. | 7-1231.09. Freedom from seclusion and restraint. |
| 7-1231.03. Forensic consumers. | 7-1231.10. Information privacy. |
| 7-1231.04. Conditions of mental health service delivery. | 7-1231.11. Evaluation of mental health services and supports. |
| 7-1231.05. Service planning. | 7-1231.12. Grievances. |
| 7-1231.06. Durable power of attorney for health care; declaration of advance instructions for mental health treatment. | 7-1231.13. Retention of civil rights. |
| 7-1231.07. Consent to mental health services and mental health supports. | 7-1231.14. Consent of youth receiving mental health services or mental health supports. |
| | 7-1231.15. Enforcement. |

§ 7-1231.01. Short title.

This chapter may be cited as the “Mental Health Consumers’ Rights Protection Act of 2001”.

(Dec. 18, 2001, D.C. Law 14-56, § 201, 48 DCR 7674.)

Emergency legislation. — For temporary (90 day) addition of section, see § 201 of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

Legislative history of Law 14-56. — Law 14-56, the “Department of Mental Health Establishment Amendment Act of 2001”, was introduced in Council and assigned Bill No. 14-

136, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 26, 2001, and July 10, 2001, respectively. Signed by the Mayor on July 24, 2001, it was assigned Act No. 14-119 and transmitted to both Houses of Congress for its review. D.C. Law 14-56 became effective on December 18, 2001.

§ 7-1231.02. Definitions.

For the purposes of this chapter, the term:

(1) “Abuse” means any knowing, reckless, or intentional act or omission by a provider that causes or is likely to cause or contribute to, or which caused or is likely to have caused or contributed to, injury, death, or financial exploitation of a consumer.

(2) “Attorney-in-fact” means a person provided with a consumer’s durable power of attorney for health care in accordance with § 21-2205(a).

(3) “Capacity” means the ability to understand and appreciate the nature and consequences of the proposed treatment, including the benefits and risks of, and alternatives to, the proposed treatment, and to make and communicate a decision regarding the proposed treatment.

(4) “Consumers” means adults, children, or youth who seek or receive mental health services or mental health supports in the District of Columbia under Chapter 5 of Title 21, without regard to voluntary, non-protesting, or involuntary status.

(5) “Court” means the Superior Court of the District of Columbia.

(6) “Declaration of advance instructions” means a statement of a consumer’s treatment preferences, including his or her informed choice to accept or forego particular mental health services and mental health supports.

(7) “Department of Mental Health” or “Department” means the Depart-

ment of Mental Health established pursuant to Chapter 11A of this Title [§ 7-1131.01 et seq.].

(8) "Director" means the Director of the Department of Mental Health.

(8A) "Domestic partnership" shall have the same meaning as provided in § 32-701(4)).

(9) "Drug used as a restraint" means a medication that is used in addition to or in place of the consumer's regular, prescribed drug regimen to control extreme behavior during an emergency, but does not include medications that comprise the consumer's regular, prescribed medical regimen and that are part of the consumer's service plan, even if their purpose is to control ongoing behavior.

(10) "Emancipated minor" means any minor who is living separate and apart from his or her parent(s) or legal guardian, with or without the consent of the parent(s) or legal guardian and regardless of the duration of such separate residence, and who is managing his or her own personal and financial affairs, regardless of the source or extent of the minor's income.

(11) "Emergency" means a situation in which a consumer is experiencing a mental health crisis and in which the immediate provision of mental health treatment is, in the written opinion of the attending physician, necessary to prevent serious injury to the consumer or others.

(11A) "Gender identity or expression" shall have the same meaning as provided in § 2-1401.02(12A).

(12) "Grievance" means a description by any individual of his or her dissatisfaction with the Department or other provider, including the denial or abuse of any consumer right or protection provided in this chapter or in other law.

(13) "IDEA" means the Individuals with Disabilities Education Act, approved June 4, 1997 (111 Stat. 37; 20 U.S.C. § 1400 et seq.).

(14) "Individual Plan of Care" means the individualized service plan for the care of a child or youth with or at risk of mental health problems, including processes for the appropriate transition of youth receiving mental health services and mental health supports from the system of care for children, youth, and their families into the system of care for adults.

(15) "Individual Recovery Plan" means the individualized service plan for the treatment of a person with mental illness.

(16) "Mental health services" means services delivered in the District of Columbia for the purpose of addressing mental illness or mental health problems.

(17) "Mental health supports" means supports delivered in the District of Columbia for the purpose of addressing mental illness or mental health problems.

(18) "Minor" means a person under 18 years of age, but shall not include a person who is an emancipated minor or who is married.

(19) "Neglect" means any act or omission by a provider which causes or is likely to cause or contribute to, or which caused or is likely to have caused or contributed to, the injury, death, or financial exploitation of a consumer.

(20) "Physical restraint" means any mechanical device, material, or equipment attached or adjacent to the consumer's body, or any manual

method, that the consumer cannot easily remove and that restricts his or her freedom of movement or normal access to his or her body.

(21) "Provider" means an individual or entity that:

(A) Is duly licensed or certified to provide mental health services or mental health supports in the District of Columbia; or

(B) Has entered into an agreement with the Department to provide mental health services or mental health supports.

(22) "Residents of the District" means persons who voluntarily live in the District and have no intention of presently removing themselves from the District. The term "residents of the District" shall not include persons who live in the District solely for a temporary purpose. Residency shall not be affected by temporary absence from and the subsequent return or intent to return to the District. Residency shall not depend upon the reason that persons entered the District, except to the extent that it bears upon whether they are in the District for a temporary purpose.

(23) "Restraint" means either a physical restraint or a drug that is being used as a restraint.

(24) "Seclusion" means any involuntary confinement of a consumer alone in a room or an area from which the consumer is either physically prevented from leaving or from which the consumer is led to believe he or she cannot leave at will.

(25) "Service plan" means an Individual Plan of Care or Individual Recovery Plan as defined in this section.

(26) "Substantial change" means a significant change in the type of mental health services or mental health supports being delivered to the consumer, a change in the consumer's service provider, or a change in the consumer's primary service location, but shall not include:

(A) Changes in the routine day-to-day care of the consumer;

(B) Routine or periodic changes or adjustments in the consumer's regular, prescribed drug regimen;

(C) Changes relating to the consumer's routine or minor medical care needs;

(D) Formulation of the consumer's initial service plan; or

(E) Changes specifically contemplated in a service plan regarding which the personal representative has already received notification.

(27) "Substitute health care decision-maker" means an individual authorized to make decisions about an incapacitated consumer's health care treatment pursuant to § 21-2210(a).

(28) "System of care for adults" means a community support system for persons with mental illness that is developed through collaboration in the administration, financing, resource allocation, training, and delivery of services across all appropriate public systems. Each person's mental health services and mental health supports are based on an Individual Recovery Plan, designed to promote recovery and develop social, community, and personal living skills, and to meet essential human needs, and includes the appropriate integrated, community-based outpatient services and inpatient care, outreach, emergency services, crisis intervention and stabilization, age-appropriate

educational and vocational readiness and support, housing and residential treatment and support services, family and caregiver supports and education, and services to meet special needs, which may be delivered by both public and private entities.

(29) “System of care for children, youth, and their families” means a community support system for children or youth with mental health problems and their families, which is developed through collaboration in the administration, financing, resource allocation, training, and delivery of services across all appropriate public systems. Each child’s or youth’s mental health services and mental health supports are based on a single, child-and youth-centered, and family-focused Individual Plan of Care, encompassing all necessary and appropriate services and supports, which may be delivered by both public and private entities. Prevention, early intervention, and mental health services and mental health supports to meet individual and special needs are delivered in natural, nurturing, and integrated environments, recognize the importance of and support for the maintenance of enduring family relationships, and are planned and developed within the District and as close to the child’s or youth’s home as possible so that families need not relinquish custody to secure treatment for their children and youth.

(Dec. 18, 2001, D.C. Law 14-56, § 202, 48 DCR 7674; June 25, 2008, D.C. Law 17-177, § 9(a), 55 DCR 3696; Sept. 12, 2008, D.C. Law 17-231, § 17(a), 55 DCR 6758.)

Effect of amendments. — D.C. Law 17-177 added par. (11A).

D.C. Law 17-231 added par. (8A).

Emergency legislation. — For temporary (90 day) addition of section, see § 202 of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

Legislative history of Law 14-56. — For Law 14-56, see notes following § 7-1231.01.

Legislative history of Law 17-177. — For Law 17-177, the “Prohibition of Discrimination on the Basis of Gender Identity and Expression

Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-330, which was referred to the Committee on Workforce Development and Government Operations. The Bill was adopted on first and second readings on February 5, 2008, and March 4, 2008, respectively. Signed by the Mayor on March 19, 2008, it was assigned Act No. 17-329 and transmitted to both Houses of Congress for its review. D.C. Law 17-177 became effective on June 25, 2008.

Legislative history of Law 17-231. — For Law 17-231, see notes following § 7-621.

§ 7-1231.03. Forensic consumers.

Nothing in this chapter is intended to abridge the rights of persons committed to the care of the Department by order of the court in a criminal proceeding.

(Dec. 18, 2001, D.C. Law 14-56, § 203, 48 DCR 7674.)

Emergency legislation. — For temporary (90 day) addition of section, see § 203 of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

Legislative history of Law 14-56. — For Law 14-56, see notes following § 7-1231.01.

§ 7-1231.04. Conditions of mental health service delivery.

(a) The Department and other providers shall, at all times, treat consumers with consideration and respect for the consumer's dignity, autonomy, and privacy. Respectful treatment shall also be extended to the consumer's family members, personal representative, attorney-in-fact, and guardian.

(b) Consumers shall have access to mental health services and mental health supports free of discrimination on the basis of race, color, religion, national origin, language, culture, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, and place of residence.

(c) Consumers shall be free from physical, emotional, sexual, or financial abuse, neglect, harassment, coercion, and exploitation when seeking or receiving mental health services and mental health supports.

(d) Consumers shall receive their individual mental health services and mental health supports in the least restrictive, most integrated setting appropriate to their individual needs.

(e) Consumers in residential, day, or inpatient treatment programs shall have the following additional rights, consistent with the health and safety of the consumer and others:

(1) Free communication with, and reasonable visitation by, their attorneys, attorneys-in-fact, clergy, family members, significant others, personal representatives, and guardians;

(2) Access to telephones to make and receive confidential calls, including free local calls and reasonable access to free long distance calls for indigent consumers, and assistance in calling if requested and needed;

(3)(A) Opportunities to communicate by sealed, uncensored mail or otherwise with officials in the Department, their attorneys, the court, and their personal physicians or qualified psychologists;

(B) All mail or communications other than those referred to in subparagraph (A) of this paragraph may be read only if there is reason to believe, documented in the consumer's clinical record, that such mail or communications contains items, information, or substances which may be harmful to the consumer or others. In such cases, the provider shall notify the consumer of the action taken with regard to the correspondence and the reason therefor. Incoming mail not delivered to the consumer in accordance with this subsection shall be returned to the sender; and

(C) Writing materials and postage stamps shall be made available for use by consumers, and upon request, the provider shall assist the consumer in writing, addressing, and posting letters and other documents;

(4) Freedom to wear their own clothes and to keep and use personal possessions, including toilet articles, unless a physician determines and documents in the consumer's clinical record that specific limitations on these rights are necessary for a clinical purpose;

(5) Freedom to maintain their personal appearance, including head and body hair, in a reasonable manner according to personal taste, unless it adversely affects the health or safety of the consumer or others;

- (6) Access to reasonable individual storage space for private use;
- (7) Freedom to engage in or abstain from the practice of religion, and freedom from harassment aimed at encouraging the consumer to engage in the religious practices of the provider or other consumers;
- (8) Reasonable opportunities for social interaction with members of either sex, unless such interaction is specifically limited or withheld under a consumer's service plan because, in the written opinion of the consumer's physician or qualified psychologist, permitting the consumer to interact freely with others presents a substantial risk of serious harm to the consumer or others or will substantially preclude effective treatment of the consumer; and
- (9) Reasonable opportunities for regular physical exercise and freedom to go outdoors at regular and frequent intervals.

(Dec. 18, 2001, D.C. Law 14-56, § 204, 48 DCR 7674; June 25, 2008, D.C. Law 17-177, § 9(b), 55 DCR 3696.)

Effect of amendments. — D.C. Law 17-177, in subsec. (b), substituted "sexual orientation, gender identity or expression" for "sexual orientation".

Emergency legislation. — For temporary (90 day) addition of section, see § 204 of Mental Health Service Delivery Reform Congressional

Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

Legislative history of Law 14-56. — For Law 14-56, see notes following § 7-1231.01.

Legislative history of Law 17-177. — For Law 17-177, see notes following § 7-1231.01.

§ 7-1231.05. Service planning.

(a) Consumers shall have the right to meaningful participation in the development of their service plans, as well as the opportunity to participate in planning for their transition from one provider to another. Such service planning shall include the right to be informed about one's own condition and legal status, and of proposed or current services, treatment, therapies, or other available alternatives. In the course of service planning, no individual mental health service or mental health support shall be conditioned upon agreement to accept another service or support.

(b) Beginning at least one year before a consumer transitions into the system of care for adults, or sooner if required under applicable law such as IDEA, a youth's Individual Plan of Care shall be revised to include a statement regarding the needed transition services for the youth, including, if appropriate, a statement of the interagency responsibilities or any needed linkages with other services and supports.

(c) The opportunities for participation in service planning described in this section shall extend to the consumer's family members or personal representative if the consumer so requests orally or in writing. Family members or personal representatives who are participating in the consumer's service planning, and to whom the consumer has authorized the release of information in accordance with Chapter 12 of this title, shall be notified whenever there is a substantial change in the consumer's services or placement.

(d) The consumer may revoke his or her consent to the participation or authorization for notification described in subsection (c) of this section at any time.

(e) The Department, or other providers as appropriate, shall be responsible for ensuring that a consumer's service plan is implemented.

(Dec. 18, 2001, D.C. Law 14-56, § 205, 48 DCR 7674.)

Emergency legislation. — For temporary (90 day) addition of section, see § 205 of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

Legislative history of Law 14-56. — For Law 14-56, see notes following § 7-1231.01.

§ 7-1231.06. Durable power of attorney for health care; declaration of advance instructions for mental health treatment.

(a) All consumers may execute a durable power of attorney for health care in accordance with Chapter 22 of Title 21. The durable power of attorney for health care may include a statement of the consumer's mental health treatment preferences, which shall be honored by his or her attorney-in-fact in accordance with § 21-2206(c)(1), or by any substitute health care decision-maker in accordance with § 21-2210(b). The consumer's treatment preferences shall be followed by the Department or other provider, except for good cause as documented in the consumer's clinical records, and shall never be overridden for the convenience of the Department or other provider.

(b) For purposes of informing a substitute health care decision-maker about his or her mental health treatment preferences pursuant to § 21-2210(b), a consumer may execute a declaration of advance instructions regarding his or her informed choice to accept or forego particular mental health services and mental health supports. A substitute health care decision-maker shall act in accordance with the consumer's treatment preferences as expressed in the consumer's declaration of advance instructions. The consumer's treatment preferences shall be followed by the Department or other provider, except for good cause as documented in the consumer's clinical records, and shall never be overridden for the convenience of the Department or other provider.

(c) The existence of a consumer's durable power of attorney for health care or declaration of advance instructions for mental health treatment shall not affect his or her right to make decisions about the receipt of particular mental health services and mental health supports when he or she is capable of making such decisions.

(d)(1) The consumer shall provide for delivery of his or her durable power of attorney for health care or declaration of advance instructions for mental health treatment to his or her providers, attorney-in-fact, family members, and personal representative.

(2) If the consumer is comatose, incompetent, or otherwise incapacitated, any other person may deliver the durable power of attorney for health care or declaration of advance instructions for mental health treatment to the consumer's physician or to any health care provider serving the consumer.

(3) Any provider who is notified of the consumer's durable power of attorney for health care or declaration of advance instructions for mental

health treatment shall promptly make the durable power of attorney or declaration a part of the consumer's clinical records.

(4) Any provider who has been notified of the existence of a consumer's durable power of attorney for health care or declaration of advance instructions for mental health treatment shall make reasonable efforts to obtain the durable power of attorney or declaration for the purpose of assisting an attorney-in-fact or substituted decision-maker in making decisions about the particular mental health services and mental health supports to be provided to the consumer pursuant to Chapter 22 of Title 21.

(Dec. 18, 2001, D.C. Law 14-56, § 206, 48 DCR 7674.)

Emergency legislation. — For temporary (90 day) addition of section, see § 206 of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

Legislative history of Law 14-56. — For Law 14-56, see notes following § 7-1231.01.

§ 7-1231.07. Consent to mental health services and mental health supports.

(a) Except in accordance with the procedure described in subsection (c)(3) of this section or as otherwise provided by law, no mental health services or mental health supports shall be provided absent a consumer's informed consent. In seeking a consumer's informed consent, the Department or other provider shall present the consumer with information about the proposed services or supports, including their purpose, side effects, and potential risks and benefits, as well as information about feasible alternative treatments.

(b) If, after providing such information, the consumer's physician is of the opinion that the consumer is incapable of making a decision regarding the provision of particular mental health services and mental health supports, the physician shall seek certification of the consumer's incapacitation in accordance with Chapter 22 of Title 21.

(c) If a consumer is certified as incapacitated in accordance with § 21-2204, his or her physician shall seek to obtain consent to the provision of particular mental health services and mental health supports as follows:

(1) If the physician is aware that the consumer has executed a durable power of attorney for health care pursuant to § 21-2205, and the consumer's attorney-in-fact is available and willing to make a decision pursuant to § 21-2206 about the provision of particular mental health services and mental health supports, the physician shall seek to obtain consent from the attorney-in-fact. Except in an emergency as described in subsection (c)(3)(A) of this section or as otherwise provided by law, only those particular mental health services and mental health supports to which the attorney-in-fact consents shall be provided;

(2) If the attending physician is unaware that the consumer has executed a durable power of attorney for health care, if the consumer's attorney-in-fact is unavailable or unwilling to make a decision about the provision of particular mental health services and mental health supports, or if no durable power of

attorney for health care has been executed by the consumer, the consumer's physician shall seek to obtain consent from a substitute health care decision-maker in accordance with § 21-2210. Except in an emergency as described in subsection (c)(3)(A) of this section or as otherwise provided by law, only those particular mental health services and mental health supports to which the substitute health care decision-maker consents shall be provided;

(3) If no attorney-in-fact or substitute health care decision-maker is available and willing to make a decision about the provision of particular mental health services and mental health supports, no mental health services or mental health supports shall be provided until a decision is made by a guardian sought and appointed by the court pursuant to § 21-2041 to provide such services and supports, except:

(A) In an emergency, when it is the written opinion of the attending physician that delay in obtaining the consent of the consumer, the attorney-in-fact, or a substitute health care decision-maker is likely to result in serious injury to the consumer or others, and mental health services and mental health supports are delivered only to the extent necessary to terminate the emergency; or

(B) After the conclusion of the administrative procedure set forth in § 7-1231.08.

(4) If, following 30 days from the date of certification of the consumer's incapacitation under this section, a consumer continues to be incapacitated for purposes of making a particular health care decision, and there remains no attorney-in-fact or substitute decision-maker available to make a decision about the delivery of particular mental health services and mental health supports to the consumer, the Department, or other provider as appropriate, shall seek the appointment of a guardian for the consumer in accordance with subchapter V of Chapter 20 of Title 21.

(d) Family members and personal representatives to whom the consumer has authorized release of information in accordance with Chapter 12 of this title shall be notified as soon as possible whenever mental health services and mental health supports are provided without the consent of the consumer pursuant to subsection (c)(3) of this section.

(e) Electroconvulsive treatment shall not be administered to a consumer without the consumer's own informed and written consent unless authorized by an order of the court issued in accordance with §§ 21-2047(c)(2) and 21-2211(b).

(Dec. 18, 2001, D.C. Law 14-56, § 207, 48 DCR 7674.)

Emergency legislation. — For temporary (90 day) addition of section, see § 207 of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

Legislative history of Law 14-56. — For Law 14-56, see notes following § 7-1231.01.

§ 7-1231.08. Administration of medication.

(a) Except as provided in this section, no consumer shall be administered

medication for the purpose of mental health treatment without his or her informed consent. In seeking a consumer's informed consent, the Department or other provider shall present the consumer with information about the proposed medication, including the purpose for its administration, possible side effects, and its potential risks and benefits, as well as information about feasible alternative treatments.

(b) If a consumer has been certified as incapacitated for purposes of making a health care decision in accordance with § 21-2204, his or her attorney-in-fact or substitute health care decision-maker may consent to the administration of medication only in accordance with the consumer's treatment preferences as expressed in his or her durable power of attorney for health care or declaration of advance instructions for mental health treatment. This preference may be overridden only after the procedures set forth in subsection (c) of this section are followed.

(c) Except in an emergency or in the absence of an attorney-in-fact or substitute health care decision-maker who is available and willing to make a decision about the administration of medication for the purpose of mental health treatment, a provider may administer medication to the incapacitated consumer only after receiving approval for such action through an administrative procedure established by the Department in accordance with Chapter 5 of Title 2. The administrative procedure established by the Department shall include, at a minimum:

- (1) Written and oral notice to the consumer of available advocacy services;
- (2) The right to a meeting convened by a neutral party within the Department for the purpose of reviewing the necessity for involuntary administration of medication;
- (3) The right of the consumer to not less than 48 hours prior notice of any such meeting;
- (4) The right of the consumer to be present and have representation during any such meeting;
- (5) The opportunity, at the meeting, for the consumer and his or her representative to present information and to discuss the necessity of medication with the physician seeking to administer it;
- (6) A written decision by the neutral party, within a period of time established by the Department, regarding whether the medication may be administered over the objection of the consumer. This decision shall be valid for no more than 30 days if it authorizes the involuntary administration of medication;
- (7) The right to appeal the decision of the neutral party to an independent panel consisting of 3 persons appointed by the Director and convened within 72 hours. The members of the panel shall not be affiliated with the individual consumer, the provider, or the physician seeking to administer the medication, but shall include:
 - (A) A board-certified psychiatrist;
 - (B) A licensed practitioner; and
 - (C) A consumer, or if unavailable, a consumer advocate; and
- (8) The right to have any decision of a neutral party that is appealed to

the panel stayed pending a determination by the panel regarding whether the decision should stand or be overturned.

(d) A consumer's refusal to consent to medication on the basis of a valid religious objection shall not be overridden absent a specific court order requiring the provider to administer the medication.

(e) Family members and personal representatives to whom the consumer has authorized release of information in accordance with Chapter 12 of this title, shall be notified whenever a provider involuntarily administers medication pursuant to subsections (c) or (d) of this section.

(f) The neutral party, and members of the panel and their employers, shall be immune from suit for any claim arising from any good faith act or omission under this section.

(Dec. 18, 2001, D.C. Law 14-56, § 208, 48 DCR 7674.)

Emergency legislation. — For temporary (90 day) addition of section, see § 208 of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

Legislative history of Law 14-56. — For Law 14-56, see notes following § 7-1231.01.

§ 7-1231.09. Freedom from seclusion and restraint.

(a) Consumers have the right to be free from seclusion and restraint of any form that is not medically necessary or that is used as a means of coercion, discipline, convenience, or retaliation by staff.

(b) Seclusion or restraint may only be used by:

- (1) Hospitals when administering inpatient services;
- (2) Residential treatment facilities licensed pursuant to section 948 of Title 29 of the District of Columbia Municipal Regulations (Standards for Participation of Residential Treatment Centers for Children and Youth); and
- (3) Mental health crisis emergency programs certified by the Department, if rules authorizing such use are promulgated by the Department.

(c) Seclusion or restraint can be used only in an emergency when:

(1) The use of seclusion or restraint is, in the written opinion of the attending physician, necessary to prevent serious injury to the consumer or others;

(2) Less restrictive interventions have been considered and determined to be ineffective to prevent serious injury to the consumer or others; and

(3) Pursuant to the written order of the attending physician, which shall never be written as a standing order or on an as-needed basis, and which must be followed by consultation with the consumer's treating physician as soon as possible if the order was not written by the consumer's treating physician.

(d) Any use of seclusion or restraint shall be:

- (1) Implemented in the least restrictive manner possible;
- (2) Implemented in accordance with safe and appropriate seclusion or restraint techniques;
- (3) Continually assessed, monitored, and reevaluated; and
- (4) Ended at the earliest possible time.

(e) All staff having direct consumer contact must have ongoing education

and training in the proper and safe use of seclusion and restraint techniques and in alternative methods for handling behavior, symptoms, and situations that traditionally have been treated through the use of seclusion or restraint.

(f) Any consumer to whom seclusion or restraint is applied must be seen by his or her attending or treating physician within one hour after the initiation of the seclusion or restraint. The physician shall evaluate the continued need for seclusion or restraint, and upon expiration of the original order, may renew the original order only within the following durational limitations:

(1) Four hours for adults;

(2) Two hours for children and adolescents 9 to 17 years of age; and

(3) One hour for children under 9 years of age.

(g) No use of seclusion or restraint may extend beyond a 24-hour period.

(h) Seclusion and restraint may not be used simultaneously unless the consumer is:

(1) Continually monitored face-to-face by an assigned staff member; or

(2) Continually monitored by an assigned staff member using both video and audio equipment that is in close proximity to the consumer.

(i) Providers must report to the Department any death that occurs while a consumer is secluded or restrained and any death that could reasonably have been the result of the use of seclusion or restraint.

(j) The Department shall establish standards for the use of seclusion and restraint that minimize circumstances giving rise to the use of seclusion and restraint and that maximize safety when seclusion or restraint is used. The standards shall:

(1) Require that provider staff receive effective, ongoing, competency-based education and training on:

(A) Understanding and appropriately responding to the underlying bases for behaviors exhibited by consumers;

(B) The use of de-escalation and other non-physical intervention techniques;

(C) The safe use of seclusion and restraint; and

(D) The staff's own behaviors and how their behaviors can escalate or diffuse the behaviors of consumers;

(2) Require adequate staff levels and configurations, based on a variety of factors, including the physical environment, consumer diagnoses, co-occurring conditions, acuity levels, and age or developmental status of consumers;

(3) Establish a post-seclusion and post-restraint process for use by providers, which shall include debriefings with the consumer, the consumer's family members or personal representatives if the consumer so consents, and staff about the events giving rise to the incident and how collection of that information will help prevent recurrences. The process shall include counseling for the consumer and staff for any trauma that may have resulted from the use of seclusion or restraint; and

(4) Require providers to establish a performance improvement program, which shall include, at a minimum, the collection and analysis of relevant data for reducing the occurrence of emergency situations that precipitate the use of seclusion and restraint and for increasing its safety when used.

(Dec. 18, 2001, D.C. Law 14-56, § 209, 48 DCR 7674.)

Emergency legislation. — For temporary (90 day) addition of section, see § 209 of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

Legislative history of Law 14-56. — For Law 14-56, see notes following § 7-1231.01.

§ 7-1231.10. Information privacy.

(a) Consumers shall be informed of their right to access their mental health information records and may request correction of inaccurate information contained in the records in accordance with Chapter 12 of this title.

(b) Information and records about a consumer's mental health services and mental health supports shall be treated confidentially in accordance with Chapter 12 of this title.

(Dec. 18, 2001, D.C. Law 14-56, § 210, 48 DCR 7674.)

Emergency legislation. — For temporary (90 day) addition of section, see § 210 of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

Legislative history of Law 14-56. — For Law 14-56, see notes following § 7-1231.01.

§ 7-1231.11. Evaluation of mental health services and supports.

Consumers shall have an opportunity to participate in periodic evaluation of mental health services and mental health supports, including evaluation of providers. The opportunity shall extend to members of the consumer's family or personal representative.

(Dec. 18, 2001, D.C. Law 14-56, § 211, 48 DCR 7674.)

Emergency legislation. — For temporary (90 day) addition of section, see § 211 of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

Legislative history of Law 14-56. — For Law 14-56, see notes following § 7-1231.01.

§ 7-1231.12. Grievances.

(a) The Department shall, in accordance with Chapter 5 of Title 2, promulgate rules that:

(1) Require providers to adopt a policy and procedure regarding the timely review and resolution of grievances brought to the provider by its consumers. All grievances resolved in this manner shall be reduced to writing and reported to the Department in a manner established by the Department; and

(2) Establish a process for the resolution of grievances, which shall include, at a minimum:

(A) The opportunity for any person to file a grievance with the Department regarding mental health services or mental health supports or violations

of or limitations on consumer rights or protections provided by this chapter or other applicable law. Unless a grievance involves an allegation of abuse or neglect of a consumer, a grievance filed by a third party may be reviewed only if the consumer so consents;

(B) Assistance for any consumer who needs help in filing his or her grievance, orally or in writing;

(C) The right of all consumers to be represented throughout the grievance process;

(D) Definite time frames for each stage of the grievance resolution process, including expedited review for any grievance alleging abuse or neglect;

(E) A requirement that mental health services and mental health supports continue without limitation, reduction, or termination pending the resolution of a grievance regarding those services or supports;

(F) Requirements for education and assistance to consumers, provider staff, and third parties about consumer rights and the grievance resolution system; and

(G) Prohibitions on retaliatory actions such as reprisal, restraint, interference, coercion, or discrimination by the Department or other providers against persons who file grievances.

(b)(1) Any grievance filed with the Department shall receive a prompt and impartial review through the Director or the Director's designee, who shall refer the grievance to an external reviewer in accordance with rules established by the Department.

(2) The external reviewer shall conduct a simple and immediate examination of the grievance as follows:

(A) The external reviewer shall facilitate informal resolution of the grievance; or

(B) If such informal resolution is not possible, the external reviewer shall make a determination either sustaining or denying the grievance, which shall include recommendations for remedying the grievance, as appropriate.

(3) The external reviewer shall conduct his or her examination of the grievance in accordance with rules established by the Department, and shall document the outcome of the external review process through a written report submitted to the Director and the parties.

(4) Any party who is dissatisfied with the outcome of the external review process may request a fair hearing, which shall meet the requirements of a contested case proceeding under § 2-509.

(c) Nothing in this section shall be construed to restrict or limit the rights, procedures, and remedies available under federal or local laws protecting the rights of adults or children or youth with mental disabilities. If an aggrieved party files suit in a court of law in pursuit of such otherwise available remedies, action on any related grievance filed by the aggrieved party with the Department shall be stayed pending a final decision by the court.

(Dec. 18, 2001, D.C. Law 14-56, § 212, 48 DCR 7674.)

Emergency legislation. — For temporary (90 day) addition of section, see § 212 of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

Legislative history of Law 14-56. — For Law 14-56, see notes following § 7-1231.01.

§ 7-1231.13. Retention of civil rights.

Consumers shall be presumed legally competent and retain all civil rights, unless otherwise limited by order of the court. As used in this section, the term “civil rights” shall include, but not be limited to, the rights to:

- (1) Contract;
- (2) Hold a professional, occupational, or motor vehicle driver’s license;
- (3) Marry or enter into a domestic partnership, or obtain a divorce, annulment, or dissolution of marriage or a termination of a domestic partnership in accordance with § 32-702(d).
- (4) Make a will;
- (5) Hold or dispose of property;
- (6) Vote;
- (7) Sue and be sued;
- (8) Serve on a jury; and
- (9) Enjoy all benefits and privileges guaranteed by law.

(Dec. 18, 2001, D.C. Law 14-56, § 213, 48 DCR 7674; Sept. 12, 2008, D.C. Law 17-231, § 17(b), 55 DCR 6758.)

Effect of amendments. — D.C. Law 17-231 rewrote par. (3), which had read as follows: “(3) Marry or obtain a divorce, annulment, or dissolution of marriage;”.

Emergency legislation. — For temporary (90 day) addition of section, see § 213 of Mental Health Service Delivery Reform Congressional

Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

Legislative history of Law 14-56. — For Law 14-56, see notes following § 7-1231.01.

Legislative history of Law 17-231. — For Law 17-231, see notes following § 7-621.

§ 7-1231.14. Consent of youth receiving mental health services or mental health supports.

(a) Except for those minors hospitalized pursuant to the emergency provisions in subchapter III of Chapter 5 of Title 21, or pursuant to an order of commitment under § 21-545 or § 16-2315, § 16-2320, or § 16-1321, no minor may be admitted for inpatient mental health services absent the consent of a parent or legal guardian.

(b)(1) A provider may deliver outpatient mental health services and mental health supports other than medication to a minor who is voluntarily seeking such services without parental or guardian consent if the provider determines that:

- (A) The minor is knowingly and voluntarily seeking the services; and
- (B) Provision of the services is clinically indicated for the minor’s well-being.

(2) Mental health services and mental health supports provided to a minor without the consent of a parent or guardian pursuant to subsection

(b)(1) of this section shall be limited to a period of 90 days. At the end of the 90-day period, the provider shall either:

(A) Make a new determination pursuant to subsection (b)(1) of this section that provision of services to the minor without parental or guardian consent is voluntarily sought by the minor and continues to be clinically indicated;

(B) Terminate the services; or

(C) With the consent of the minor, notify the parent(s) or guardian to obtain consent to provide further outpatient services.

(3) The provider shall fully document the reasons for its determinations regarding delivery of mental health services to minors, and shall include such documentation in the minor's clinical record.

(4) A provider may conduct an initial interview of a minor who appears to be voluntarily seeking outpatient mental health services and mental health supports without parental or guardian consent or involvement in order to determine whether the criteria of subsection (b)(1) of this section are satisfied.

(c)(1) Subject to the provisions in § 7-1231.08, and absent an emergency, a hospital providing inpatient mental health services to a minor who is under 16 years of age may not administer psychotropic medication to the minor without the consent of a parent or guardian or the authorization of the court;

(2) A minor who is 16 years of age or older may consent to the administration of psychotropic medications, without the consent of a parent or guardian or the authorization of the court, only under the following circumstances:

(A) When the minor's parent(s) or guardian is not reasonably available to make a decision regarding the administration of psychotropic medication and the treating physician determines that the minor has capacity to consent, consistent with § 7-1231.08, and that such medications are clinically appropriate;

(B) When requiring consent of the minor's parent(s) or guardian would have a detrimental effect on the minor, and a determination is made by both the treating physician and a non-treating psychiatrist who is not an employee of the provider that the minor has capacity to consent, consistent with § 7-1231.08, and that such medications are clinically indicated;

(C) When the minor's parent(s) or guardian refuses to give such consent, and a determination is made by both the treating physician and a non-treating psychiatrist who is not an employee of the provider that the minor has capacity to consent, consistent with § 7-1231.08, and that such medications are clinically indicated. Notice of the provider's decision to administer medications pursuant to this subsection shall be provided to the parent(s) or guardian in writing.

(Dec. 18, 2001, D.C. Law 14-56, § 214, 48 DCR 7674.)

Emergency legislation. — For temporary (90 day) addition of section, see § 214 of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

Legislative history of Law 14-56. — For Law 14-56, see notes following § 7-1231.01.

§ 7-1231.15. Enforcement.

Rights and protections provided in this chapter shall not be construed to create new causes of action for monetary damages beyond those that currently exist in federal and local law.

(Dec. 18, 2001, D.C. Law 14-56, § 215, 48 DCR 7674.)

Cross references. — Health-care assistance reimbursement, set-off, see § 4-603.

Nursing homes and community residence facilities protections, receivers, powers and duties, see § 44-1002.06.

(90 day) addition of section, see § 215 of Mental Health Service Delivery Reform Congressional Review Emergency Act of 2001 (D.C. Act 14-144, October 23, 2001, 48 DCR 9947).

Legislative history of Law 14-56. — For Law 14-56, see notes following § 7-1231.01.

Emergency legislation. — For temporary

SUBTITLE D. CITIZENS WITH INTELLECTUAL DISABILITIES.

CHAPTER 13. CITIZENS WITH INTELLECTUAL DISABILITIES.

Subchapter I. Statement of Purpose; Definitions

Sec.

- 7-1301.01. [Reserved].
- 7-1301.02. Statement of purpose.
- 7-1301.03. Definitions.

Subchapter II. Determination of Need for Mental Retardation Facilities and Services in the District

- 7-1302.01. [Repealed].

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- 7-1303.01. Competence of individual to refuse commitment.
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- 7-1303.07. Immediate discharge from facility upon request by individual.
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- 7-1305.01. Habilitation and care; habilitation program.
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- 7-1305.06. Prohibited psychological therapies.
- 7-1305.06a. Informed consent.
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- 7-1305.07. [Repealed].
- 7-1305.07a. Health-care decisions policy, annual plan, and quarterly reports.
- 7-1305.08. Sterilization.
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- 7-1305.11. Performance of labor.
- 7-1305.12. Maintenance of records; information considered privileged and confidential; access; contents.
- 7-1305.13. Initiation of action to compel rights; civil remedy; sovereign immunity.

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| Sec. | | Sec. | |
| | barred; defense to action; payment of expenses. | 7-1306.02. | Severability. |
| 7-1305.14. | Deprivation of civil rights; public or private employment; retention of rights; liability; immunity; exceptions. | 7-1306.03. | Appropriations. |
| 7-1305.15. | Coordination of services for dually diagnosed individuals. | 7-1306.03a. | Rules for implementation. |
| | | 7-1306.04. | Authority of Board of Education unchanged. |
| | | 7-1306.05. | Effective date. |
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| 7-1306.01. | [Repealed]. | | |

Subchapter I. Statement of Purpose; Definitions.

§ 7-1301.01. [Reserved].

§ 7-1301.02. Statement of purpose.

(a) It is the intent of the Council of the District of Columbia to:

(1) Assure that residents of the District of Columbia with mental retardation shall have all the civil and legal rights enjoyed by all other citizens of the District of Columbia and the United States;

(2) Secure for each resident of the District of Columbia with mental retardation, regardless of ability to pay, such habilitation as will be suited to the needs of the person, and to assure that such habilitation is skillfully and humanely provided with full respect for the person's dignity and personal integrity and in a setting least restrictive of personal liberty;

(3) Encourage and promote the development of the ability and potential of each person with mental retardation in the District to the fullest possible extent, no matter how severe his or her degree of disability;

(4) Promote the economic security, standard of living and meaningful employment of persons with mental retardation;

(5) Maximize the assimilation of persons with mental retardation into the ordinary life of the community in which they live; and

(6) Provide a mechanism for the identification of persons with mental retardation at the earliest age possible.

(b) To accomplish these purposes, the Council of the District of Columbia finds and declares that the design and delivery of care and habilitation services for persons with mental retardation shall be directed by the principles of normalization, and therefore:

(1) Community-based services and residential facilities that are least restrictive to the personal liberty of the individual shall be established for persons with mental retardation at each stage of life development;

(2) The use of institutionalization shall be abated to the greatest extent possible;

(3) Whenever care in an institution or residential facility is required, it shall be in the least restrictive setting; and

(4) Individuals placed in institutions shall be transferred to community or

home environments whenever possible, consistent with professional diagnoses and recommendations.

(Mar. 3, 1979, D.C. Law 2-137, § 102, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(a), 42 DCR 3684; Apr. 24, 2007, D.C. Law 16-305, § 26(a), 53 DCR 6198.)

Section references. — This section is referred to in §§ 21-2002 and 21-2047.

Prior Codifications. — 1981 Ed., § 6-1901. 1973 Ed., § 6-1651.

Effect of amendments. — D.C. Law 16-305, in subsec. (a)(3), substituted “person with mental retardation” for “mentally retarded person”; and substituted “persons with mental retardation” for “mentally retarded persons” throughout the section.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 505(a) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

Emergency legislation. — For temporary amendment of section, see § 505(a) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

For temporary (90-day) provisions directing implementation of Medicaid waiver conversion, see § 3002 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see § 3002 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 2-137. — Law 2-137, the “Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978,” was introduced in Council and assigned Bill No. 2-108, which was referred to the Committee on Human Resources and Aging. The Bill was adopted on first and second readings on September 19, 1978 and October 3, 1978, respectively. Signed by the Mayor on November 8, 1978, it was assigned Act No. 2-297 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-52. — Law 11-52, the “Omnibus Budget Support Act of 1995,” was introduced in Council and assigned Bill No. 11-218, which was referred to the

Committee of the Whole. The Bill was adopted on first and second readings on April 19, 1995, and June 6, 1995, respectively. Signed by the Mayor on July 13, 1995, it was assigned Act No. 11-94 and transmitted to both Houses of Congress for its review. D.C. Law 11-52 became effective on September 26, 1995.

Legislative history of Law 13-172. — Law 13-172, the “Fiscal Year 2001 Budget Support Act of 2000,” was introduced in Council and assigned Bill No. 13-679, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 18, 2000, and June 6, 2000, respectively. Signed by the Mayor on June 26, 2000, it was assigned Act No. 13-375 and transmitted to both Houses of Congress for its review. D.C. Law 13-172 became effective on October 19, 2000.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 7-531.01.

Delegation of Authority. — Delegation of Authority to the Administration of the Mental Retardation and Developmental Disabilities Administration and Requirements for Inter-Agency Cooperation, see Mayor’s Order 2006-101, July 26, 2006 (53 DCR 6393).

Editor’s notes. — Section 3002 of D.C. Law 13-172 provided: “The Department of Human Services and the Department of Health shall coordinate the full implementation of the Medicaid Home and Community Based Waiver and abolish the Community Residential Facilities for the Mentally Retarded and Developmentally Disabled (‘MRDD’) level of care and convert all MRDD clients previously served by Community Residential Facilities (‘CRF’) for the Mentally Retarded and Developmentally Disabled to the Home and Community Based Waiver. The Mayor shall submit quarterly reports to the Council detailing the progress of the implementation of the Medicaid Home and Community Based Waiver.”

Mayor’s Orders. — Establishment—D.C. Mental Retardation and Developmental Disabilities Administration (MRDDA) Fatality Review Committee, see Mayor’s Order 2001-27, February 14, 2001 (48 DCR 2180).

CASE NOTES

ANALYSIS

Care and support.

Construction and application.
Construction with federal law.
Damages.

Purposes.

Care and support.

Mother could not argue, for first time on appeal from termination of her parental rights, that agency failed to provide adequate services geared toward special needs arising out of her borderline mental retardation. *In re Antj. P.*, 812 A.2d 965, 2002 D.C. App. LEXIS 740 (2002).

Mildly retarded adult could not require District of Columbia to provide him and his mentally retarded wife with a supervised apartment under Mentally Retarded Citizens Constitutional Rights and Dignity Act; mildly retarded adult was unwilling to take part in range of services that Bureau of Community Services determined were necessary to his habilitation, including counseling, medical services and group home. D.C. Code 1981, § 6-1901 et seq. *In re G.T.*, 611 A.2d 537, 1992 D.C. App. LEXIS 192 (1992).

Parents have common-law duty to support their physically or mentally disabled children, even after children have reached age of majority. *Nelson v. Nelson*, 548 A.2d 109, 1988 D.C. App. LEXIS 169 (1988).

District council, in enacting Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, specifically intended provision allowing transfer of mentally retarded persons without prior notice and court approval solely for purpose of respite care to give respite to family caring for the mentally retarded person when the family needed to be temporarily away, all in an effort to promote and maintain close family ties. D.C. Code 1981, §§ 6-1902(23), 6-1934. *In re Williams*, 471 A.2d 263, 1984 D.C. App. LEXIS 300 (1984).

Construction and application.

Plaintiffs, mentally disabled adult women who had received habilitation services from District of Columbia, were entitled to leave to amend their § 1983 complaint to specifically allege that constitutional due process required District's Department of Disability Services to obtain court order prior to authorizing non-emergency abortions to be performed on plaintiffs, where case law related to this issue was unsettled and neither plaintiffs nor District fully briefed issue on plaintiffs' motion for leave. *Doe v. District of Columbia*, 815 F.Supp.2d 208, 2011 U.S. Dist. LEXIS 113387 (2011).

Plaintiffs, mentally disabled adult women who had received habilitation services from District of Columbia, were entitled to leave to amend their complaint to allege violations of District's Mentally Retarded Citizens Constitutional Rights and Dignity Act and its guarantee of rights to receive habilitation services suited to their needs and humanely provided with full

respect for person's dignity and personal integrity in relation to District's authorization of abortions performed on plaintiffs, where, if plaintiffs succeeded on their § 1983 claim that consent was constitutionally inadequate under due process, they may have been able to make out claims for violation of Act's guarantees. *Doe v. District of Columbia*, 815 F.Supp.2d 208, 2011 U.S. Dist. LEXIS 113387 (2011).

Although hospital ultimately took position, that patient who had been civilly committed for mental illness was releasable, record of hearing, including testimony of hospital's chief of service that patient was both mentally ill and retarded, thus presenting dual problem, did not suggest release from civil commitment under the Ervin Act merely because patient was also committable under the Retarded Citizens Act; therefore, remand for further proceedings would be required to determine if patient was no longer mentally ill to extent that he was likely to injure self or others if not hospitalized, in which case court could proceed to disposition solely under the Retarded Citizens Act, or if diagnosis did not permit release, in which case court would determine whether patient could be treated under both the Ervin Act and the Retarded Citizens Act. D.C. Code 1981, §§ 6-1901 et seq., 21-501 et seq., 21-546, 21-548. *In re Hanna*, 484 A.2d 537, 1984 D.C. App. LEXIS 538 (1984).

Construction with federal law.

District of Columbia was not unduly prejudiced by amendment to § 1983 complaint of plaintiffs, who, as mentally disabled women who had received habilitation services from District, sought to specifically allege battery claims in relation to non-emergency surgeries that District approved to be performed on plaintiffs, where amended complaint maintained core allegation that surgeries were improperly authorized under District's Mentally Retarded Citizens Constitutional Rights and Dignity Act, such that District's discovery obligations in defending new battery claims were same as with respect to unconstitutional consent claims. *Doe v. District of Columbia*, 815 F.Supp.2d 208, 2011 U.S. Dist. LEXIS 113387 (2011).

Plaintiffs, mentally disabled adult women who had received habilitation services from District of Columbia, were entitled to leave to amend their § 1983 complaint to allege that District's Department of Disability Services violated one plaintiff's liberty interests in bodily integrity by failing to obtain consent from her family for non-emergency abortion, and that this failure was pursuant to custom or policy of arranging for fictitious consents, where claim simply restated pending issue of whether District violated plaintiffs' liberty interests by failing to obtain consent from, or ignoring or over-

riding wishes of, those persons authorized to consent on plaintiffs' behalf. *Doe v. District of Columbia*, 815 F.Supp.2d 208, 2011 U.S. Dist. LEXIS 113387 (2011).

Plaintiffs, mentally disabled adult women who had received habilitation services from District of Columbia, were entitled to leave to amend their § 1983 complaint to specifically allege that abortions performed on plaintiffs constituted batteries because consent to surgery by District's Department of Disability Services was constitutionally inadequate under due process, where, if such consent was in fact inadequate, plaintiffs may have been able to make out battery claims. *Doe v. District of Columbia*, 815 F.Supp.2d 208, 2011 U.S. Dist. LEXIS 113387 (2011).

The federal Education for All Handicapped Children Act is not in conflict with and does not preempt the District Mentally Retarded Citizens Constitutional Rights and Dignity Act. In *re J.E.C.*, 117 WLR 2485 (Super. Ct. 1989).

District has ultimate responsibility for mental retardation cases within District while the

federal government provides services for the mentally ill and each category has its own statutory scheme, commitment standards, treatment facilities and release provisions. In *re Hanna*, 111 WLR 497 (Super. Ct. 1983).

Damages.

Since the whole thrust of the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978 is not to treat mentally retarded persons as less than full citizens, a court may assess damages just as it would for a normal person who was kept in a locked ward each day, treated as a pet, not given proper care for her documented needs (both physical and mental), but was fed, clothed, and sheltered. *Maza v. District of Columbia*, 110 WLR 2229 (Super. Ct. 1982).

Purposes.

The purposes and goals of this section provide the standards against which the District's actions must be judged. *Maza v. District of Columbia*, 110 WLR 2229 (Super. Ct. 1982).

§ 7-1301.03. Definitions.

As used in this chapter:

(1) "Admission" means the voluntary entrance by an individual who is at least moderately mentally retarded into an institution or residential facility.

(1A) "Advanced practice registered nurse" includes a nurse-practitioner or clinical nurse specialist, licensed pursuant to § 3-1202.04 and Chapter 59 or Chapter 60 of Title 17 of the District of Columbia Municipal Regulations, who has been certified as a specialist in psychiatry and mental health.

(2) "At least moderately mentally retarded" means a person who is found, following a comprehensive evaluation, to be impaired in adaptive behavior to a moderate, severe or profound degree and functioning at the moderate, severe or profound intellectual level in accordance with standard measurements as recorded in the Manual of Terminology and Classification in Mental Retardation, 1973, American Association on Mental Deficiency.

(2A) "Behavioral plan" means a written plan that, at a minimum:

(A) Identifies challenging or problematic behavior;

(B) States the working hypothesis about the cause of the customer's behavior and uses the working hypothesis as the basis for the selected intervention;

(C) Identifies strategies to teach or encourage the customer to adopt adaptive behavior as an alternative to the challenging or problematic behavior;

(D) Considers the potential for environmental or programmatic changes that could have a positive impact on challenging or problematic behaviors; and

(E) Addresses the customer's need for additional technological or supervisory assistance to adapt or cope with day-to-day activities.

(2B) "Best interests" means promoting personal well-being by assessing:

(A) The reason for the proposed action, its risks and benefits, and any alternatives considered and rejected; and

(B) The least intrusive, least restrictive, and most normalizing course of action possible to provide for the needs of the customer.

(2C) "Cause injury to others as a result of the individual's mental retardation" means cause injury to others as a result of deficits in adaptive functioning associated with mental retardation.

(3) "Chief Program Director" means an individual with special training and experience in the diagnosis and habilitation of persons with mental retardation, and who is a Qualified Mental Retardation Professional appointed or designated by the Director of a facility for persons with mental retardation to provide or supervise habilitation and care for customers of the facility.

(4) "Commitment" means the placement in a facility, pursuant to a court order, of an individual who has at least moderate mental retardation at the request of the individual's parent or guardian without the consent of the individual or of an individual found incompetent in a criminal case at the request of the District; except it shall not include placement for respite care.

(5) "Community-based services" means non-residential specialized or generic services for the evaluation, care and habilitation of persons with mental retardation, in a community setting, directed toward the intellectual, social, personal, physical, emotional or economic development of a person with mental retardation. Such services shall include, but not be limited to, diagnosis, evaluation, treatment, day care, training, education, sheltered employment, recreation, counseling of the person with an intellectual disability and his or her family, protective and other social and socio-legal services, information and referral, and transportation to assure delivery of services to persons of all ages who have mental retardation.

(5A) "Competent" means to have the mental capacity to appreciate the nature and implications of a decision to enter a facility, choose between or among alternatives presented, and communicate the choice in an unambiguous manner.

(6) "Comprehensive evaluation" means an assessment of a person with mental retardation by persons with special training and experience in the diagnosis and habilitation of persons with mental retardation, which includes a documented sequence of observations and examinations intended to determine the person's strengths, developmental needs, and need for services. The initial comprehensive evaluation shall include documentation of:

(A) A physical examination that includes the person's medical history;

(B) An educational evaluation, vocational evaluation, or both;

(C) A psychological evaluation, including an evaluation of cognitive and adaptive functioning levels;

(D) A social evaluation;

(E) A dental examination;

(F) An evaluation by the interdisciplinary team of whether the person currently:

(i) Has the capacity to grant, refuse, or withdraw consent to any ongoing medical treatment; and

(ii) Has executed or could execute a durable power of attorney in accordance with § 21-2205; and

(G) A determination of whether the person has an individual reasonably available, mentally capable, and willing to provide substituted consent pursuant to § 21-2210.

(7) "Council" means the Council of the District of Columbia.

(8) "Court" means the Superior Court of the District of Columbia.

(8A) "Crime of violence" has the same meaning as in § 23-1331(4).

(8B) "Customer" means a person admitted to or committed to a facility pursuant to subchapter III of this chapter for habilitation or care.

(8C) "Department on Disability Services" or "DDS" means the Department on Disability Services established by § 7-761.03.

(9) "Department of Human Services" means the Department of Human Services of the District of Columbia.

(10) "Director" means the administrative head of a facility, or community-based service and includes superintendents.

(11) "District" means the District of Columbia government.

(11A) "DSM-IV" means the most recent version of the Diagnostic and Statistical Manual of Mental Disorders.

(11B) "DSM-IV 'V' Codes" means "V" codes as defined in the most recent version of the Diagnostic and Statistical Manual of Mental Disorders.

(12) "Education" means a systematic process of training, instruction and habilitation to facilitate the intellectual, physical, social and emotional development of a person with mental retardation.

(13) "Facility" means a public or private residence, or part thereof, which is licensed by the District as a skilled or intermediate care facility or a community residential facility (as defined in D.C. Regulation 74-15, as amended) and also includes any supervised group residence for persons with mental retardation under 18 years of age. For persons committed or for whom commitment may be sought under § 7-1304.06a, the term "facility" may include a physically secure facility or a staff-secure facility, within or without the District of Columbia. The term "facility" does not include a jail, prison, other place of confinement for persons who are awaiting trial or who have been found guilty of a criminal offense, or a hospital for the mentally ill within the meaning of § 24-501.

(14) "Habilitation" means the process by which a person is assisted to acquire and maintain those life skills which enable him or her to cope more effectively with the demands of his or her own person and of his or her own environment, including, in the case of a person committed under § 7-1304.06a, to refrain from committing crimes of violence or sex offenses, and to raise the level of his or her physical, intellectual, social, emotional and economic efficiency. "Habilitation" includes, but is not limited to, the provision of community-based services.

(14A) "Human Rights Advisory Committee" means the committee of the Department on Disability Services that provides guidance and oversight regarding matters pertaining to the human rights of individuals receiving services through the Department on Disability Services and reviews allegations of human rights violations.

(14B) "ICD-9-CM" means the most recent version of the International Classification of Diseases Code Manual.

(14C) "Individual found incompetent in a criminal case" means an individual who:

(A) Is at least mildly mentally retarded;

(B) Is charged with a crime of violence or sex offense;

(C) Has been found incompetent to stand trial, or to participate in sentencing or transfer proceedings; and

(D) Has been found not likely to gain competence in the foreseeable future.

(15) "Informed consent" means consent voluntarily given in writing with sufficient knowledge and comprehension of the subject matter involved to enable the person giving consent to make an understanding and enlightened decision, without any element of force, fraud, deceit, duress or other form of constraint or coercion.

(16) "Least restrictive alternative" means that living and/or habilitation arrangement which least inhibits an individual's independence and right to liberty. It shall include, but not be limited to, arrangements which move an individual from:

(A) More to less structured living;

(B) Larger to smaller facilities;

(C) Larger to smaller living units;

(D) Group to individual residences;

(E) Segregated from the community to integrated with community living and programming; and/or

(F) Dependent to independent living.

(17) "Mayor" means the Mayor of the District of Columbia.

(17A) "Mental illness" means a diagnosable mental, behavioral, or emotional disorder (including those of biological etiology) which substantially impairs the mental health of the person or is of sufficient duration to meet diagnostic criteria specified within the DSM-IV or its ICD-9-CM equivalent (and subsequent revisions) with the exception of DSM-IV "V" codes, substance abuse disorders, mental retardation, and other developmental disorders, or seizure disorders, unless those exceptions co-occur with another diagnosable mental illness.

(18) "Mental retardation advocate" means a member of the group of advocates created pursuant to § 7-1304.13.

(19) "Mental retardation" or "persons with mental retardation" means a substantial limitation in capacity that manifests before 18 years of age and is characterized by significantly subaverage intellectual functioning, existing concurrently with 2 or more significant limitations in adaptive functioning.

(19A) Repealed.

(20) "Normalization principle" means the principle of aiding persons with mental retardation to obtain a lifestyle as close to normal as possible, making available to them patterns and conditions of everyday life which are as close as possible to the patterns of mainstream society.

(20A) "Psychotropic medication" means a medication prescribed for the treatment of symptoms of mental or emotional disorders or to influence and

modify behavior, cognition, or affective state. The term “psychotropic medication” includes the following categories of medications:

- (A) Antipsychotics or neuroleptics;
- (B) Antidepressants;
- (C) Agents for control of mania or depression;
- (D) Antianxiety agents;
- (E) Sedatives, hypnotics, or other sleep-promoting drugs; and
- (F) Psychomotor stimulants.

(21) “Qualified mental retardation professional” means:

(A) A psychologist with at least a master’s degree from an accredited program and with specialized training or 1 year of experience in mental retardation; or

(B) A physician licensed by the Commission on Licensure to Practice the Healing Arts to practice medicine in the District and with specialized training in mental retardation or with 1 year of experience in treating persons with mental retardation; or

(C) An educator with a degree in education from an accredited program and with specialized training or 1 year of experience in working with persons with mental retardation; or

(D) A social worker with:

(i) A master’s degree from a school of social work accredited by the Council on Social Work Education (New York, New York), and with specialized training in mental retardation or with 1 year of experience in working with persons with mental retardation; or

(ii) With a bachelor’s degree from an undergraduate social work program accredited by the Council on Social Work Education who is currently working and continues to work under the supervision of a social worker as defined in sub-subparagraph (i) of this subparagraph, and who has specialized training in mental retardation or 1 year of experience in working with persons with mental retardation; or

(E) A rehabilitation counselor who is certified by the Commission on Rehabilitation Counselor Certification (Chicago, Illinois) and who has specialized training in mental retardation or 1 year of experience in working with persons with mental retardation; or

(F) A physical or occupational therapist with a bachelor’s degree from an accredited program in physical or occupational therapy and who has specialized training or 1 year of experience in working with persons with mental retardation; or

(G) A therapeutic recreation specialist who is a graduate of an accredited program and who has specialized training or 1 year of experience in working with persons with mental retardation.

(22) “Resident of the District of Columbia” means a person who maintains his or her principal place of abode in the District of Columbia, including a person with mental retardation who would be a resident of the District of Columbia if the person had not been placed in an out-of-state facility by the District. A person with mental retardation who is under 21 years of age shall be deemed to be a resident of the District of Columbia if the custodial parent of the person with mental retardation is a resident of the District of Columbia.

(23) “Respite care” means temporary overnight care provided to a person with mental retardation in a hospital or facility, upon application of a parent, guardian or family member, for the temporary relief of such parent, guardian or family member, who normally provides for the care of the person.

(24) “Respondent” means the person whose commitment or continued commitment is being sought in any proceeding under this chapter.

(24A) “Screening” means an assessment of a person with mental retardation in accordance with standards issued by the Accreditation Council for Services for People with Developmental Disabilities, which is designed to determine if a further evaluation of the person with mental retardation or other interventions are indicated.

(24B) “Sex offenses” means offenses in Chapter 30 of Title 22, but does not include any offense described in § 22-4016(b).

(24C) “Substituted judgment” means making a decision that conforms as closely as possible with the decision that the customer would have made, based upon knowledge of the beliefs, values, and preferences of the customer.

(25) “Time out” means time out from positive reinforcement, a behavior modification procedure in which, contingent upon undesired behavior, the resident is removed from the situation in which positive reinforcement is available.

(26) “Transfer proceedings” means the proceedings pursuant to § 16-2307 to transfer an individual less than 18 years of age from Family Court to Criminal Court in the Superior Court of the District of Columbia to face adult criminal charges.

(Mar. 3, 1979, D.C. Law 2-137, § 103, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(b), 42 DCR 3684; Oct. 17, 2002, D.C. Law 14-199, § 2(a), 49 DCR 7647; Mar. 14, 2007, D.C. Law 16-264, § 301(a), 54 DCR 818; Apr. 24, 2007, D.C. Law 16-305, § 26(b), 53 DCR 6198; Oct. 22, 2008, D.C. Law 17-249, § 5(a), 55 DCR 9206; Mar. 25, 2009, D.C. Law 17-353, § 205, 56 DCR 1117.)

Section references. — This section is referred to in §§ 7-761.02 and 7-1303.12a.

Prior Codifications. — 1981 Ed., § 6-1902. 1973 Ed., § 6-1652.

Effect of amendments. — D.C. Law 14-199 added par. (2A); in par. (4), substituted “consent of the individual or of an individual found incompetent in a criminal case at the request of the District;” for “consent of the individual;”; redesignated par. (8A) as (8B); added new par. (8A); added pars. (11A) and 11(B); in par. (13), substituted “18 years of age. For persons committed or for whom commitment may be sought under § 7-1304.06a, the term ‘facility’ may include a physically secure facility or a staff-secure facility, within or without the District of Columbia. The term ‘facility’ does not include a jail, prison, other place of confinement for persons who are awaiting trial or who have been found guilty of a criminal offense, or a hospital for the mentally ill within the meaning of § 24-501” for “18 years of age.”; in par. (14),

substituted “own environment, including, in the case of a person committed under § 7-1304.06a, to refrain from committing crimes of violence or sex offenses,” for “own environment”; added pars. (14A), (14B), and (17A); rewrote par. (19); and added pars. (19A), (24B), and (26). Prior to amendment, par. (19) had read as follows: “(19) ‘Mentally retarded’ means a significantly subaverage general intellectual level determined in accordance with standard measurements as recorded in the Manual of Terminology and Classification in Mental Retardation, 1973, American Association on Mental Deficiency, existing concurrently with impairment in adaptive behavior, which originates during the development period.”

D.C. Law 16-264 added par. (8C) and repealed par. (19A), which formerly read:

“(19A) ‘MRDDA’ means the Mental Retardation and Developmental Disabilities Administration of the District of Columbia, Department of Human Services.”

D.C. Law 16-305 substituted “person with

mental retardation” for “mentally retarded person”, “persons with mental retardation” for “mentally retarded persons”, “have mental retardation” for “are mentally retarded”, and “persons with mental retardation” for “mentally retarded”.

D.C. Law 17-353, in par. (4), substituted “has at least moderate mental retardation” for “is at least moderately mentally retarded”; and validated a previously made technical correction in par. (21)(B).

D.C. Law 17-249 inserted pars. (1A), (2A), (2B), (14A), (20A), and (24C); redesignated former pars. (2A), (14A), and (14B) as pars. (2C), (14B), and (14C), respectively; and rewrote par. (6), which had read as follows: “(6) ‘Comprehensive evaluation’ means an assessment of a person with mental retardation by persons with special training and experience in the diagnosis and habilitation of persons with mental retardation, which includes a sequence of observations and examinations intended to determine the person’s strengths, developmental needs, and need for services. The initial comprehensive evaluation shall include, but not be limited to, a physical examination that includes the person’s medical history; an educational evaluation, vocational evaluation, or both; a psychological evaluation, including an evaluation of cognitive and adaptive functioning levels; a social evaluation; and a dental examination.”

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 505(b) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

For temporary (225 day) amendment of section, see § 4(a) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Temporary Amendment Act of 2005 (D.C. Law 16-46, February 9, 2006, law notification 53 DCR 1454).

For temporary (225 day) amendment of section, see § 4(a) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Temporary Amendment Act of 2006 (D.C. Law 16-194, March 2, 2007, law notification 54 DCR 2492).

For temporary (225 day) amendment of section, see § 4(a) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Temporary Amendment Act of 2007 (D.C. Law 17-100, February 2, 2008, law notification 55 DCR 3407).

Emergency legislation. — For temporary amendment of section, see § 505(b) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

For temporary (90 day) amendment of section, see § 2(a) of Civil Commitment of Citizens with Mental Retardation Emergency Amend-

ment Act of 2002 (D.C. Act 14-383, June 12, 2002, 49 DCR 5701).

For temporary (90 day) amendment of section, see § 2(a) of Civil Commitment of Citizens with Mental Retardation Legislative Review Emergency Amendment Act of 2002 (D.C. Act 14-454, July 23, 2002, 49 DCR 8096).

For temporary (90 day) amendment of section, see § 4(a) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Emergency Amendment Act of 2005 (D.C. Act 16-190, October 28, 2005, 52 DCR 10021).

For temporary (90 day) amendment of section, see § 4(a) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-262, January 26, 2006, 53 DCR 795).

For temporary (90 day) amendment of section, see § 4(a) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Amendment Act of 2006 (D.C. Act 16-480, September 25, 2006, 53 DCR 7940).

For temporary (90 day) amendment of section, see § 4(a) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-566, December 19, 2006, 53 DCR 10272).

For temporary (90 day) amendment of section, see § 301(a) of Developmental Disabilities Services Management Reform Emergency Amendment Act of 2006 (D.C. Act 16-672, December 28, 2006, 54 DCR 1155).

For temporary (90 day) amendment of section, see § 4(a) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2007 (D.C. Act 17-161, October 18, 2007, 54 DCR 10932).

For temporary (90 day) amendment of section, see § 4(a) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-245, January 23, 2008, 55 DCR 1230).

For temporary (90 day) amendment, see § 5(a) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2008 (D.C. Act 17-492, August 4, 2008, 55 DCR 9167).

Legislative history of Law 2-137. — For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 14-199. — Law 14-199, the “Civil Commitment of Citizens with Mental Retardation Amendment Act of 2002”, was introduced in Council and assigned Bill

No. 14-616, which was referred to the Committee on Judiciary. The Bill was adopted on first and second readings on June 4, 2002, and July 2, 2002, respectively. Signed by the Mayor on July 17, 2002, it was assigned Act No. 14-432 and transmitted to both Houses of Congress for its review. D.C. Law 14-199 became effective on October 17, 2002.

Legislative history of Law 16-264. — Law 16-264, the “Developmental Disabilities Service Management Reform Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-334, which was referred to Committee on Human Services. The Bill was adopted

on first and second readings on December 5, 2006, and December 19, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-620 and transmitted to both Houses of Congress for its review. D.C. Law 16-264 became effective on March 14, 2007.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 7-531.01.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 7-161.

Legislative history of Law 17-249. — For Law 17-249, see notes following § 7-1203.03.

CASE NOTES

ANALYSIS

Director.
Guardian.
Mentally retarded.
Respite care.
Voluntary admission.

Director.

For the purposes of § 6-1929, “director” includes not only the director of the facility, but also those in a supervisory role, such as District of Columbia officials who placed ward in the facility. In re Cook, 118 WLR 1057 (Super. Ct. 1990).

Guardian.

Given the uncertainty on the face of the statute as to whether the term “guardian” in statutory provision defining respite care for mentally retarded persons included Department of Human Services, resort to the legislative history of the statute was appropriate. D.C. Code 1981, § 6-1902(23). In re Williams, 471 A.2d 263, 1984 D.C. App. LEXIS 300 (1984).

“Guardian,” as used in Mentally Retarded Citizens Constitutional Rights and Dignity Act provision permitting transfer of mentally retarded person without prior notice and court approval solely for purpose of respite care, does not include a government entity such as the Department of Human Services, even if the entity acts as a provider of care to a mentally retarded person, in light of emphasis in legislative history on maintaining family ties with mentally retarded person. D.C. Code 1981, §§ 6-1902(23), 6-1934. In re Williams, 471 A.2d 263, 1984 D.C. App. LEXIS 300 (1984).

Mentally retarded.

Mother’s alleged borderline mental retardation did not entitle her to additional or different reunification services in connection with child protection and termination of parental rights

proceedings, in absence of any statutorily-required evidence supporting diagnosis of mental retardation or any request by mother for special services due to limitations in her intellectual capacity. In re Antj. P., 812 A.2d 965, 2002 D.C. App. LEXIS 740 (2002).

Section 6-1901 et seq. can apply to an individual who has been diagnosed by expert witnesses as moderately mentally retarded, as defined in paragraph (2) of this section, even though that person’s raw I.Q. scores place him within the range of mild mental retardation, which, if deemed dispositive, would exclude him from this section’s applicability. In re Brooks, 112 WLR 353 (Super. Ct. 1984).

This chapter prescribes a two prong test to determine whether an individual is at least moderately mentally retarded. The individual must be at least moderately mentally retarded cognitively and at least moderately mentally retarded adaptively. In re Jones, 123 WLR 1917 (Super. Ct. 1995).

Respite care.

District council, in enacting Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, specifically intended provision allowing transfer of mentally retarded persons without prior notice and court approval solely for purpose of respite care to give respite to family caring for the mentally retarded person when the family needed to be temporarily away, all in an effort to promote and maintain close family ties. D.C. Code 1981, §§ 6-1902(23), 6-1934. In re Williams, 471 A.2d 263, 1984 D.C. App. LEXIS 300 (1984).

Voluntary admission.

Mildly retarded individual in continued need for residential services was entitled to voluntary admission to residential facility. D.C. Code 1981, §§ 6-1902(1), 6-1922. In re Bicksler, 501 A.2d 1, 1985 D.C. App. LEXIS 534 (1985).

Subchapter II. Determination of Need for Mental Retardation Facilities and Services in the District.

§ 7-1302.01. Determination of need for mental retardation facilities and services in the District. [Repealed].

Repealed.

(Mar. 3, 1979, D.C. Law 2-137, § 201, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506 (c), 42 DCR 3684.)

Cross references. — Rights of mentally retarded citizens, commitment proceedings, see § 7-1304.01.

Rights of mentally retarded citizens, effective date of chapter, see § 7-1306.05.

Prior Codifications. — 1981 Ed., § 6-1911. 1973 Ed., § 6-1653.

Temporary Amendment of Section. — For temporary (225 day) repeal of section, see § 505(c) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

Emergency legislation. — For temporary repeal of section, see § 505(c) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

For temporary repeal of section, see § 506(c) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative history of Law 2-137. — For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 7-1301.02.

Transfer of Functions. — The functions of the Department of Transportation were transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984.

The functions of the Department of General Services were transferred, in part, to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984, and transferred, in part, to the Department of Administrative Services by Reorganization Plan No. 5 of 1983, effective March 1, 1984.

Subchapter III. Admission, Commitment, Discharge, Transfer, Respite Care.

§ 7-1303.01. Competence of individual to refuse commitment.

(a) Except as provided in subsection (b) of this section, no individual 14 years of age or older who has or is believed to have mental retardation shall be committed to a facility if the individual is determined by the Court to be competent to refuse such commitment. For purposes of this chapter, persons 14 years of age and older shall be presumed competent to refuse commitment.

(b) The Court may commit an individual pursuant to § 7-1304.06a irrespective of the individual's competence to refuse such commitment.

(Mar. 3, 1979, D.C. Law 2-137, § 301, 25 DCR 5094; Oct. 17, 2002, D.C. Law 14-199, § 2(b), 49 DCR 7647; Apr. 24, 2007, D.C. Law 16-305, § 26(c), 53 DCR 6198.)

Prior Codifications. — 1981 Ed., § 6-1921. 1973 Ed., § 6-1654.

Effect of amendments. — D.C. Law 14-199 redesignated the section as subsec. (a); in subsec. (a), substituted “Except as provided in subsection (b) of this section, no individual” for “No individual”; and added subsec. (b).

D.C. Law 16-305, in subsec. (a), substituted “has or is believed to have mental retardation” for “is or is believed to be mentally retarded”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(b) of Civil Commitment of Citizens with Mental Retardation Emergency Amendment Act of 2002 (D.C. Act 14-383, June 12, 2002, 49 DCR 5701).

For temporary (90 day) amendment of section, see § 2(b) of Civil Commitment of Citizens with Mental Retardation Legislative Review Emergency Amendment Act of 2002 (D.C. Act 14-454, July 23, 2002, 49 DCR 8096).

Legislative history of Law 2-137. — For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 14-199. — For Law 14-199, see notes following § 7-1301.03.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 7-531.01.

CASE NOTES

Review of competency determination.

In proceeding on petition for commitment to facility for the mentally retarded, under the Rights of the Mentally Retarded Citizens Act, Court of Appeals will overturn trial court’s determination of competency only where evi-

dence is such that, as matter of law, trier of fact would be compelled to find beyond reasonable doubt that individual was incompetent. D.C. Code 1981, §§ 6-1921, 6-1947. In re Moses, 659 A.2d 829, 1995 D.C. App. LEXIS 115 (1995).

§ 7-1303.02. Voluntary admission.

(a) Any individual 14 years of age or older who has mental retardation, may have mental retardation, or has been diagnosed with mental retardation may apply to a Director of a facility for voluntary admission to that facility for habilitation and care. The Director may admit the individual; provided, that the Director has determined that the individual is at least 14 years of age.

(b) Within 10 days of the admission, the Director shall notify the Court of the admission and shall certify to the Court that a comprehensive evaluation shall be conducted and an individual habilitation plan developed within 30 days of the admission.

(c)(1) The Court shall promptly appoint an appropriate officer to determine whether the individual is competent to admit himself or herself to the facility and whether the admission is voluntary.

(2) The determination of competency shall consider, but not be limited to, an inquiry into the individual’s understanding of what habilitation and care will be provided in the facility, and what alternative means of habilitation and care are available from community-based services.

(3) If the officer determines that there is a substantial question regarding either the voluntariness of the admission or the competency of the individual, the officer shall so advise the Court, and the Court shall promptly conduct a hearing in accordance with the procedures established in subchapter IV of this chapter to resolve the issues of competency and/or voluntariness.

(4) If the Court determines that the admission is not voluntary, the Court shall order that the individual be discharged from the facility. If the Court finds that the individual is not competent to admit himself or herself, it may order that that person be discharged if it determines that discharge would be in the individual’s best interest, or it may appoint a guardian ad litem to

represent the individual in a subsequent hearing to be held promptly to determine the appropriate placement, if any, of the individual. The individual may remain in the facility until the Court hearing unless the Court decides that this would not be in the individual's best interest.

(Mar. 3, 1979, D.C. Law 2-137, § 302, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(d), 42 DCR 3684; Apr. 24, 2007, D.C. Law 16-305, § 26(d), 53 DCR 6198.)

Section references. — This section is referred to in §§ 7-1304.02, 7-1304.09, 7-1304.13, 7-1305.04.

Prior Codifications. — 1981 Ed., § 6-1922. 1973 Ed., § 6-1655.

Effect of amendments. — D.C. Law 16-305, in subsec. (a), substituted "has mental retardation, may have mental retardation, or has been diagnosed with mental retardation" for "is, may be, or has been diagnosed mentally retarded".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 505(d) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

Emergency legislation. — For temporary amendment of section, see § 505(d) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

Legislative history of Law 2-137. — For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 7-531.01.

CASE NOTES

In general.

Substantial evidence supported determination by Department on Disability Services (DDS) that ward, who had previously been removed from her parents' home following allegations of abuse and neglect, was not mentally retarded, when Child and Family Services Agency (CFSA) filed voluntary applications seeking admission of ward into a residential facility under the Mentally Retarded Citizens Constitutional Rights and Dignity Act; though ward had significant issues including pervasive developmental disorder (PDD), none of the psychological evaluations indicated that ward was mentally retarded or otherwise had subaverage intellectual functioning. In re A.T., 10 A.3d 127, 2010 D.C. App. LEXIS 728 (2010).

Ward, who had previously been removed from her parents' home following allegations of abuse and neglect, was given the opportunity to be heard in a meaningful manner, on voluntary applications by Child and Family Services Agency (CFSA) seeking admission of ward into a residential habilitation facility as a mentally retarded person under the Mentally Retarded Citizens Constitutional Rights and Dignity Act, where ward was able to submit any and all

documentation that she wanted DDS to consider, DDS considered everything put forth in support of the applications, and DDS letters clearly articulated its reasons for denying services. In re A.T., 10 A.3d 127, 2010 D.C. App. LEXIS 728 (2010).

Mildly retarded individual in continued need for residential services was entitled to voluntary admission to residential facility. D.C. Code 1981, §§ 6-1902(1), 6-1922. In re Bicksler, 501 A.2d 1, 1985 D.C. App. LEXIS 534 (1985).

The admissions requirements of this section provide a rational and comprehensible basis for excluding admissions occurring after the statute was enacted from the periodic review provisions of § 6-1951(a), but for persons admitted before the statute was enacted, that basis does not apply, and exclusion from periodic review cannot be justified by reliance on it. In re Brooks, 111 WLR 1301 (Super. Ct. 1983).

This chapter prescribes a two prong test to determine whether an individual is at least moderately mentally retarded. The individual must be at least moderately mentally retarded cognitively and at least moderately mentally retarded adaptively. In re Jones, 123 WLR 1917 (Super. Ct. 1995).

§ 7-1303.03. Application by individual for out-patient non-residential habilitation.

Any individual 14 years of age or older who has mental retardation, may have mental retardation, or has been diagnosed with mental retardation may apply to any hospital, clinic or facility, or other community-based service owned or operated by, or under contract with, the District for out-patient nonresidential habilitation. Applications shall be made to the Director of the hospital, clinic, facility or service, or to the Department on Disability Services. If an application is filed with a Director and the Director determines that the particular hospital, clinic, facility or community-based service cannot provide the necessary habilitation, he or she shall refer the individual to the Department on Disability Services, and the Department on Disability Services shall assist the individual in locating a facility, hospital, clinic or service which can provide the necessary habilitation.

(Mar. 3, 1979, D.C. Law 2-137, § 303, 25 DCR 5094; Mar. 14, 2007, D.C. Law 16-264, § 301(b), 54 DCR 818; Apr. 24, 2007, D.C. Law 16-305, § 26(e), 53 DCR 6198.)

Prior Codifications. — 1981 Ed., § 6-1923. 1973 Ed., § 6-1656.

Effect of amendments. — D.C. Law 16-264 substituted “Department on Disability Services” for “Department of Human Services” throughout the section.

D.C. Law 16-305 substituted “has mental retardation, may have mental retardation, or has been diagnosed with mental retardation” for “is, may be, or has been diagnosed mentally retarded”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 301(b) of

Developmental Disabilities Services Management Reform Emergency Amendment Act of 2006 (D.C. Act 16-672, December 28, 2006, 54 DCR 1155).

Legislative history of Law 2-137. — For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 16-264. — For Law 16-264, see notes following § 7-1301.03.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 7-531.01.

§ 7-1303.04. Petition for commitment of individual 14 years of age or older filed by parent or guardian or by the District.

(a) A written petition by a parent or guardian may be filed with the Court to have an individual 14 years of age or older, who is or is believed to have mental retardation, committed to a facility. Upon the filing of such petition, the Court shall promptly conduct a hearing in accordance with the procedures set forth in subchapter IV of this chapter. If the Court determines that the individual is competent to refuse such commitment and the individual so refuses, the Court shall dismiss the petition and order that the individual not be committed to a facility.

(b) If, on a petition filed pursuant to subsection (a) of this section, the Court determines that the individual is not competent to refuse commitment, the Court shall determine whether to order the commitment. The Court shall order the commitment only if it determines beyond a reasonable doubt that:

(1) Based on a comprehensive evaluation of the individual performed

within one year prior to the hearing, the individual is at least moderately mentally retarded and requires habilitation;

(2) Commitment to a facility is necessary in order for the individual to receive the habilitation indicated by the individual habilitation plan required and defined under § 7-1304.03;

(3) The facility to which commitment is sought, its sponsoring agency, or the Department on Disability Services is capable of providing the required habilitation; and

(4) Commitment to that facility would be the least restrictive means of providing the habilitation.

(b-1) For an individual found incompetent in a criminal case, a written petition by the District may be filed with the Court to have the individual committed to a facility. Upon the filing of the petition, the Court shall promptly conduct a hearing in accordance with the procedures set forth in subchapter IV of this chapter.

(c) The facility, its sponsoring agency, or the Department on Disability Services shall provide a written certification to the Court, before commitment to the facility is ordered, that the habilitation indicated by the individual habitation plan will be implemented.

(Mar. 3, 1979, D.C. Law 2-137, § 304, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(e), 42 DCR 3684; Oct. 17, 2002, D.C. Law 14-199, § 2(c), 49 DCR 7647; Mar. 14, 2007, D.C. Law 16-264, § 301(c), 54 DCR 818; Apr. 24, 2007, D.C. Law 16-305, § 26(f), 53 DCR 6198.)

Section references. — This section is referred to in §§ 7-1303.08, 7-1303.12a, 7-1304.03, 7-1304.05, 7-1304.06a, 7-1304.07, 7-1304.09, 7-1304.11, and 7-1304.13.

Prior Codifications. — 1981 Ed., § 6-1924. 1973 Ed., § 6-1657.

Effect of amendments. — D.C. Law 14-199, in the section heading, substituted “guardian or by the District” for “guardian”; in subsec. (b), substituted “If, on a petition filed pursuant to subsection (a) of this section, the Court” for “If the Court”; and added subsec. (b).

D.C. Law 16-264, in subsecs. (b)(3) and (c), substituted “Department on Disability Services” for “Department of Human Services”.

D.C. Law 16-305, in subsec. (a), substituted “have mental retardation” for “be mentally retarded”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 505(e) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

Emergency legislation. — For temporary amendment of section, see § 505(e) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

For temporary (90 day) amendment of section, see § 2(c) of Civil Commitment of Citizens with Mental Retardation Emergency Amendment Act of 2002 (D.C. Act 14-383, June 12, 2002, 49 DCR 5701).

For temporary (90 day) amendment of section, see § 2(c) of Civil Commitment of Citizens with Mental Retardation Legislative Review Emergency Amendment Act of 2002 (D.C. Act 14-454, July 23, 2002, 49 DCR 8096).

For temporary (90 day) amendment of section, see § 301(c) of Developmental Disabilities Services Management Reform Emergency Amendment Act of 2006 (D.C. Act 16-672, December 28, 2006, 54 DCR 1155).

Legislative history of Law 2-137. — For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 14-199. — For Law 14-199, see notes following § 7-1301.03.

Legislative history of Law 16-264. — For Law 16-264, see notes following § 7-1301.03.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 7-531.01.

CASE NOTES

ANALYSIS

Construction and application.
 Construction with federal law.
 Criminal proceedings.
 Termination of commitment.
 Weight and sufficiency of evidence.

Construction and application.

This chapter prescribes a two prong test to determine whether an individual is at least moderately mentally retarded. The individual must be at least moderately mentally retarded cognitively and at least moderately mentally retarded adaptively. In *re Jones*, 123 WLR 1917 (Super. Ct. 1995).

Construction with federal law.

The federal Education for All Handicapped Children Act (20 U.S.C. §§ 1411 et seq.) is not in conflict with and does not preempt this Act, the District Mentally Retarded Citizens Constitutional Rights and Dignity Act. In *re J.E.C.*, 117 WLR 2485 (Super. Ct. 1989).

Criminal proceedings.

Standard of incompetency prescribed by § 16-2315 applies to criminal proceedings against a mildly retarded juvenile; thus a

mildly retarded juvenile will be judged competent to stand trial under § 16-2315 and would not be released because he fell outside the standard for commitment under this section. In *re W.F.*, 116 WLR 1913 (Super. Ct. 1988).

Termination of commitment.

Construing statute dealing with periodic review of an order of commitment of a mentally retarded person [D.C. Code 1981, § 6-1951] with statute dealing with handling of written petition for commitment of one who is or is believed to be mentally retarded [D.C. Code 1981, § 6-1924], commitment of individual who had benefited from habilitation she had received and was in need of a continued residential habilitation, but was not at least moderately mentally retarded, would be terminated on ground that she was not "at least moderately mentally retarded." In *re Bicksler*, 501 A.2d 1, 1985 D.C. App. LEXIS 534 (1985).

Weight and sufficiency of evidence.

Evidence insufficient to find beyond a reasonable doubt, as required by this section, that the respondent was "at least moderately mentally retarded." In *re Jones*, 123 WLR 1917 (Super. Ct. 1995).

§ 7-1303.05. Application by parent or guardian for nonresidential habilitation.

Any parent or guardian may apply on behalf of an individual under 14 years of age who is or is believed to have mental retardation to any hospital, clinic, facility or community-based service owned or operated by, or under contract with, the District for nonresidential habilitation. Applications shall be made to the Director of the hospital, clinic, or service, or to the Department on Disability Services. If an application is filed with a Director and the Director determines that the particular hospital, clinic, facility or community-based service cannot provide the necessary habilitation, he or she shall refer the parent or guardian to the Department on Disability Services, and the Department on Disability Services shall assist the parent or guardian in locating a facility, hospital, clinic or service which can provide the required habilitation.

(Mar. 3, 1979, D.C. Law 2-137, § 305, 25 DCR 5094; Mar. 14, 2007, D.C. Law 16-264, § 301(d), 54 DCR 818; Apr. 24, 2007, D.C. Law 16-305, § 26(g), 53 DCR 6198.)

Prior Codifications. — 1981 Ed., § 6-1925. 1973 Ed., § 6-1658.

Effect of amendments. — D.C. Law 16-264 substituted "Department on Disability Services" for "Department of Human Services" throughout the section.

D.C. Law 16-305 substituted "have mental retardation" for "be mentally retarded".

Emergency legislation. — For temporary (90 day) amendment of section, see § 301(d) of Developmental Disabilities Services Management Reform Emergency Amendment Act of

2006 (D.C. Act 16-672, December 28, 2006, 54 DCR 1155).

Legislative history of Law 2-137. — For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 16-264. — For Law 16-264, see notes following § 7-1301.03.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 7-531.01.

§ 7-1303.06. Petition for commitment of individual under 14 years of age filed by parent or guardian.

(a) A parent or guardian may file a written petition with the Court to have an individual under 14 years of age who is or is believed to be mentally retarded committed to a facility. The Court shall promptly conduct a hearing in accordance with the procedures set forth in subchapter IV of this chapter to determine whether the Court shall order the commitment. The Court shall order such commitment only if it determines beyond a reasonable doubt that:

(1) Based on a comprehensive evaluation of the individual performed within one year prior to the hearing, the individual is at least moderately mentally retarded and requires habilitation;

(2) Commitment to a facility is necessary in order for the individual to receive the habilitation indicated by the individual habilitation plan required under § 7-1304.03;

(3) The facility to which commitment is sought, its sponsoring agency, or the Department on Disability Services is capable of providing the required habilitation; and

(4) Commitment to that facility would be the least restrictive means of providing the habilitation.

(b) The facility, its sponsoring agency, or the Department on Disability Services shall provide a written statement to the Court, before commitment to the facility is ordered, that the habilitation indicated by the individual's habilitation plan will be implemented.

(Mar. 3, 1979, D.C. Law 2-137, § 306, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(f), 42 DCR 3684; Mar. 14, 2007, D.C. Law 16-264, § 301(e), 54 DCR 818.)

Section references. — This section is referred to in §§ 7-1303.08, 7-1304.03, 7-1304.09, 7-1304.11, and 7-1304.13.

Prior Codifications. — 1981 Ed., § 6-1926. 1973 Ed., § 6-1659.

Effect of amendments. — D.C. Law 16-264, in subsecs. (a)(3) and (b), substituted "Department on Disability Services" for "Department of Human Services".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 505(f) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

Emergency legislation. — For temporary amendment of section, see § 505(f) of the Mul-

tiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

For temporary (90 day) amendment of section, see § 301(e) of Developmental Disabilities Services Management Reform Emergency Amendment Act of 2006 (D.C. Act 16-672, December 28, 2006, 54 DCR 1155).

Legislative history of Law 2-137. — For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 16-264. — For Law 16-264, see notes following § 7-1301.03.

CASE NOTES

Juvenile offenders.

Section 16-2315 prescribes a standard of incompetency for juvenile delinquency proceedings which is precisely the same as the standard required for commitment of mentally retarded juveniles under this section and D.C. Code § 21-1114. In both instances, the respon-

dent must be "at least moderately mentally retarded," as defined in § 6-1902(2). The result of this symmetry is that a child offender will receive treatment through either the juvenile division or a facility for the mentally retarded. In re W.F., 116 WLR 1913 (Super. Ct. 1988).

§ 7-1303.07. Immediate discharge from facility upon request by individual.

Any individual 14 years of age or older who is admitted to a facility shall have the right to immediate discharge from the facility upon written request to the Director of the facility.

(Mar. 3, 1979, D.C. Law 2-137, § 307, 25 DCR 5094.)

Prior Codifications. — 1981 Ed., § 6-1927. 1973 Ed., § 6-1660.

Legislative history of Law 2-137. — For

legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

§ 7-1303.08. Discharge from commitment upon request by parent or guardian.

Customers committed pursuant to § 7-1303.04(b) or § 7-1303.06 shall be discharged if the parent or guardian who petitioned for the commitment requests the Customer's release in writing to the Court and the Court determines, based on consultation with the Customer, his or her counsel and the customer's mental retardation advocate, if one has been appointed, that the customer consents to such release. Such customers also shall be discharged upon their own request when they have gained competence to make such a decision and have reached their 14th birthday. A hearing may be conducted pursuant to provisions of subchapter IV of this chapter to determine the question of competence.

(Mar. 3, 1979, D.C. Law 2-137, § 308, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(g), 42 DCR 3684; Oct. 17, 2002, D.C. Law 14-199, § 2(d), 49 DCR 7647.)

Prior Codifications. — 1981 Ed., § 6-1928. 1973 Ed., § 6-1661.

Effect of amendments. — D.C. Law 14-199 substituted "§ 7-1303.04(b)" for "§ 7-1303.04".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 505(g) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

Emergency legislation. — For temporary amendment of section, see § 505(g) of the Multiyear Budget Spending Reduction and Support

Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

For temporary (90 day) amendment of section, see § 2(d) of Civil Commitment of Citizens with Mental Retardation Emergency Amendment Act of 2002 (D.C. Act 14-383, June 12, 2002, 49 DCR 5701).

For temporary (90 day) amendment of section, see § 2(d) of Civil Commitment of Citizens with Mental Retardation Legislative Review Emergency Amendment Act of 2002 (D.C. Act 14-454, July 23, 2002, 49 DCR 8096).

Legislative history of Law 2-137. — For

legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see His-

torical and Statutory Notes following § 7-1301.02.

Legislative history of Law 14-199. — For Law 14-199, see notes following § 7-1301.03.

§ 7-1303.09. Transfer of individual from one facility to another.

(a) The Department on Disability Services may recommend to the Court that an individual committed to the facility be transferred to another facility if the Department on Disability Services determines that it would be beneficial and consistent with the habilitation needs of the individual to do so. Notice of the recommendation shall be served on the individual, the individual's counsel, the individual's parent or guardian who petitioned for the commitment and the individual's mental retardation advocate, if one has been appointed. If the proposed transfer is determined by the Court to be a transfer to a more restrictive facility, a mandatory hearing shall be conducted promptly in accordance with the procedures established in subchapter IV of this chapter. If the Court determines that the proposed transfer would be to a less restrictive facility, a Court hearing shall be held only if the individual, the individual's parent or guardian, or, in the case of an individual committed under § 7-1304.06a, the District requests a hearing by petitioning the Court in writing within 10 days of being notified by the Court of its determination. The hearing shall be held promptly following the request for the hearing. In deciding whether to authorize the transfer, the Court shall consider whether the proposed facility can provide the necessary habilitation and whether it would be the least restrictive means of providing such habilitation. In the case of an individual committed under § 7-1304.06a, the Court shall also consider whether the proposed placement can provide sufficient supervision or security to prevent the individual from causing injury to others as a result of the individual's mental retardation. Due consideration shall be given to the relationship of the individual to his or her family, guardian, or friends so as to maintain relationships and encourage visits beneficial to the relationship.

(b) An individual admitted to a facility can be transferred to another facility if the individual consents to the transfer.

(c) Nothing in this section shall be construed to prohibit transfer of an individual to a health care facility without prior Court approval in an emergency situation when the life of the individual is in danger. In such circumstances, consent of the individual, or parent or guardian who sought the commitment shall be obtained prior to the transfer. In the event the individual cannot consent and there is no person who can be reasonably contacted, such transfer may be made upon the authorization of the Department on Disability Services, with notice promptly given to the parent or guardian. Consent of the individual, parent, or guardian is not required if the District sought commitment. The parent, guardian, counsel for the individual, and mental retardation advocate shall be notified promptly of the transfer.

(Mar. 3, 1979, D.C. Law 2-137, § 309, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(h), 42 DCR 3684; Apr. 9, 1997, D.C. Law 11-255, § 14(a), 44 DCR

1271; Oct. 17, 2002, D.C. Law 14-199, § 2(e), 49 DCR 7647; Mar. 14, 2007, D.C. Law 16-264, § 301(f), 54 DCR 818.)

Section references. — This section⁴ is referred to in § 7-1305.03.

Prior Codifications. — 1981 Ed., § 6-1929. 1973 Ed., § 6-1662.

Effect of amendments. — D.C. Law 14-199 rewrote the section.

D.C. Law 16-264, in subsecs. (a) and (c), substituted “Department on Disability Services” for “Department of Human Services”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 505(h), (i) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

Emergency legislation. — For temporary amendment of section, see § 505(h) and (i) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

For temporary (90 day) amendment of section, see § 2(e) of Civil Commitment of Citizens with Mental Retardation Emergency Amendment Act of 2002 (D.C. Act 14-383, June 12, 2002, 49 DCR 5701).

For temporary (90 day) amendment of section, see § 2(e) of Civil Commitment of Citizens with Mental Retardation Legislative Review Emergency Amendment Act of 2002 (D.C. Act 14-454, July 23, 2002, 49 DCR 8096).

For temporary (90 day) amendment of section, see § 301(f) of Developmental Disabilities Services Management Reform Emergency Amendment Act of 2006 (D.C. Act 16-672, December 28, 2006, 54 DCR 1155).

Legislative history of Law 2-137. — For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 11-255. — Law 11-255, the “Second Technical Amendments Act of 1996,” was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Legislative history of Law 14-199. — For Law 14-199, see notes following § 7-1301.03.

Legislative history of Law 16-264. — For Law 16-264, see notes following § 7-1301.03.

CASE NOTES

In general.

Even though transfer by Department of Human Services of mentally retarded patient who was hallucinating to a more restrictive setting than her individual habilitation plan called for was contrary to applicable statute because effected without notice to counsel and without approval by the court, legal imperfection of her original detention at more restrictive setting was remedied by hearing held by trial court on patient’s habeas corpus petition challenging transfer and her subsequent enforced residence

at the restrictive facility, and by trial court’s ruling that her confinement was warranted under the circumstances. D.C. Code 1981, §§ 6-1929(a, c), 6-1943. In re Williams, 471 A.2d 263, 1984 D.C. App. LEXIS 300 (1984).

For the purposes of this section, “director” includes not only the director of the facility, but also those in a supervisory role, such as District of Columbia officials who placed ward in the facility. In re Cook, 118 WLR 1057 (Super. Ct. 1990).

§ 7-1303.10. Discharge from residential care.

(a) The Director shall discharge any resident admitted or committed pursuant to this subchapter if, in the judgment of the Director, the results of a comprehensive evaluation, which shall be performed at least annually, indicate that residential care is no longer advisable. In the case of an individual committed under § 7-1304.06a, the Director shall also consider whether the individual would be likely to cause injury to others as a result of his or her mental retardation if the individual were to be discharged from residential care.

(b) Notice of the proposed discharge under subsection (a) of this section shall be served on the resident, the resident's parent or guardian, the resident's counsel, the mental retardation advocate, and, in the case of an individual committed under § 7-1304.06a, the District at least 30 days prior to the proposed discharge. If the resident, the resident's parent or guardian, the resident's counsel, the mental retardation advocate, or, in the case of an individual committed under § 7-1304.06a, the District objects to the discharge, he or she, or the District, may file a petition with the Court requesting a hearing in accordance with the procedures set forth in subchapter IV of this chapter. Any objecting party shall file the petition requesting a hearing with the Court within 10 days of receiving the notice. The hearing, if one is requested, shall be held on or before the discharge date. The resident shall not be discharged prior to the hearing.

(Mar. 3, 1979, D.C. Law 2-137, § 310, 25 DCR 5094; Oct. 17, 2002, D.C. Law 14-199, § 2(f), 49 DCR 7647.)

Prior Codifications. — 1981 Ed., § 6-1930. 1973 Ed., § 6-1663.

Effect of amendments. — D.C. Law 14-199 rewrote the section which had read as follows: “§ 7-1303.10. Discharge from residential care. “The Director shall discharge any resident admitted or committed pursuant to this subchapter if, in the judgment of the Chief Program Director, the results of a comprehensive evaluation, which shall be performed at least annually, indicate that residential care is no longer advisable. If the resident, the resident's parent or guardian, the resident's counsel, or the mental retardation advocate objects to the discharge, he or she may file a petition with the Court requesting a hearing in accordance with the procedures set forth in subchapter IV of this chapter. The resident shall not be discharged prior to the hearing.”

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(f) of Civil Commitment of Citizens with Mental Retardation Emergency Amendment Act of 2002 (D.C. Act 14-383, June 12, 2002, 49 DCR 5701).

For temporary (90 day) amendment of section, see § 2(f) of Civil Commitment of Citizens with Mental Retardation Legislative Review Emergency Amendment Act of 2002 (D.C. Act 14-454, July 23, 2002, 49 DCR 8096).

Legislative history of Law 2-137. — For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 14-199. — For Law 14-199, see notes following § 7-1301.03.

§ 7-1303.11. Payment for habilitation and care.

(a) A person with mental retardation, or the father, mother, spouse, or adult child of a person with mental retardation, who receives habilitation, care, or both from the District pursuant to this chapter, shall pay to the District the costs of habilitation, care, or both received by the person with mental retardation if the person with mental retardation, or the father, mother, spouse, or adult child of the person with mental retardation, or the estate of the person with mental retardation is able to pay the costs of habilitation, care, or both received.

(b) If any person made liable by subsection (a) of this section does not pay the costs of habilitation, care, or both received by the person with mental retardation, the court shall issue to the liable person a citation to show cause why that person should not be adjudged to pay a portion or all of the expenses of habilitation, care, or both of the person with mental retardation. The citation shall be served at least 10 days before the show cause hearing. If, upon

the hearing, it appears to the court that the person made liable by subsection (a) of this section does not have sufficient resources to pay the full costs of habilitation, care, or both received by the person with mental retardation, the court may order the payment of a reasonable amount of the costs of habilitation, care, or both received based on the liable person's resources. The court may order the liable person to make payments quarterly, monthly, or at any other interval deemed appropriate by the court. The order may be enforced against any property of the liable person as if the order were an order for temporary alimony in a divorce case.

(c) The Mayor may examine, under oath, the father, mother, spouse, adult child, and the executor of the estate of the person with mental retardation who receives habilitation, care, or both if the person lives in the District of Columbia, to ascertain the person's ability, or the ability of the estate, to pay the full costs or contribute to the costs of habilitation, care, or both of the person with mental retardation.

(d)(1) Notwithstanding any other provision of this chapter, effective January 1, 2012, a person with mental retardation who is otherwise eligible to receive supports and services from the District pursuant to this chapter must either pay the full cost of such supports and services directly to the provider or become District Medicaid-eligible and maintain District Medicaid eligibility in order to receive supports and services under this chapter from a District Medicaid-eligible provider. This requirement shall not apply to a person:

(A) Who is a former resident of Forest Haven;

(B) Whose needs cannot reasonably be met by a District Medicaid provider;

(C) Who is eligible for enrollment in the D.C. Healthcare Alliance; or

(D) Whose representative payee for the purposes of Social Security benefits is the Department of Disability Services or a provider agency who is contracted with the District to provide supports and services for that person, if the reason the person lost Medicaid eligibility is due to a failure by the representative payee.

(2) The Department of Disability Services shall work with and support the person to become District Medicaid-eligible and to maintain District Medicaid eligibility, and the person and his or her representatives, estate, or both shall fully cooperate in such efforts.

(Mar. 3, 1979, D.C. Law 2-137, § 311, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(i), 42 DCR 3684; Sept. 14, 2011, D.C. Law 19-21, § 5002(a), 58 DCR 6226.)

Prior Codifications. — 1981 Ed., § 6-1931. 1973 Ed., § 6-1664.

Effect of amendments. — D.C. Law 19-21 added subsec. (d).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 505(j) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

For temporary (225 day) amendment of section, see § 4(a) of Human Services Spending Reduction Temporary Amendment Act of 1995 (D.C. Law 11-29, July 25, 1995, law notification 42 DCR 4002).

Emergency legislation. — For temporary amendment of section, see § 505(j) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

For temporary amendment of section, see § 4(a) of the Human Services Spending Reduction Emergency Amendment Act of 1995 (D.C. Act 11-35, April 11, 1995, 42 DCR 1834) and § 4(a) of the Human Services Spending Reduction Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-104, July 21, 1995, 42 DCR 4014).

For temporary amendment of section, see § 506(i) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative history of Law 2-137. — For legislative history of D.C. Law 2-137, see His-

torical and Statutory Notes following § 7-1301.02.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 7-731.

Short title. — Short title: Section 5001 of D.C. Law 19-21 provided that subtitle A of title V of the act may be cited as “Intellectual Disability Services Medicaid Maximization Reform Amendment Act of 2011”.

§ 7-1303.12. Court hearing required prior to commitment.

Except as provided in § 7-1303.12a, no person with mental retardation shall be committed to a facility under this chapter prior to the Court hearing required under this subchapter.

(Mar. 3, 1979, D.C. Law 2-137, § 312, 25 DCR 5094; Oct. 17, 2002, D.C. Law 14-199, § 2(g), 49 DCR 7647; Apr. 24, 2007, D.C. Law 16-305, § 26(h), 53 DCR 6198.)

Prior Codifications. — 1981 Ed., § 6-1932. 1973 Ed., § 6-1665.

Effect of amendments. — D.C. Law 14-199 substituted “Except as provided in § 7-1303.12a, no” for “No”.

D.C. Law 16-305 substituted “person with mental retardation” for “mentally retarded person”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(g) of Civil Commitment of Citizens with Mental Retardation Emergency Amendment Act of 2002 (D.C. Act 14-383, June 12, 2002, 49 DCR 5701).

For temporary (90 day) addition of § 7-1303.12a, see § 2(h) of Civil Commitment of Citizens with Mental Retardation Emergency Amendment Act of 2002 (D.C. Act 14-383, June 12, 2002, 49 DCR 5701).

For temporary (90 day) amendment of section, see § 2(g) of Civil Commitment of Citizens with Mental Retardation Legislative Review Emergency Amendment Act of 2002 (D.C. Act 14-454, July 23, 2002, 49 DCR 8096).

For temporary (90 day) addition of § 7-1303.12a, see § 2(h) of Civil Commitment of Citizens with Mental Retardation Legislative Review Emergency Amendment Act of 2002 (D.C. Act 14-454, July 23, 2002, 49 DCR 8096).

Legislative history of Law 2-137. — For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 14-199. — For Law 14-199, see notes following § 7-1301.03.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 7-531.01.

§ 7-1303.12a. Placement pending petition and commitment proceedings.

(a) In the case of an individual found incompetent in a criminal case, the District shall have no more than 30 days from the date on which the finding is made that the individual is incompetent and not likely to gain competence in the foreseeable future in which to file a petition pursuant to § 7-1303.04(b-1). For extraordinary cause shown, the Court may extend the period of time within which the petition must be filed.

(b) In the case of an individual found incompetent in a criminal case prior to October 17, 2002, the District shall have 60 days following October 17, 2002, in which to file a petition pursuant to § 7-1303.04(b-1) for commitment of an individual who is committed pursuant to § 7-1303.04(a), or of an individual

whom the Court, within 365 days prior to October 17, 2002, found incompetent and not likely to gain competency in the foreseeable future.

(c) While awaiting the District's decision pursuant to subsection (a) of this section and during the pendency of any resultant commitment proceedings, the Court may order the individual placed with DDS for placement in a setting that DDS preliminarily determines can provide habilitation services consistent with the individual's needs and supervision or security sufficient to prevent the individual from causing injury to others as a result of his or her mental retardation.

(d) If the Court or DDS places the person in a setting that does not meet the definition of a facility contained in § 7-1301.03(13), the hearing pursuant to § 7-1304.06a shall commence no later than 90 days from the date on which the finding is made that the individual is incompetent and not likely to gain competence in the foreseeable future. If the hearing does not commence before the expiration of the 90-day time period, the Court shall place the individual with the DDS for placement in a facility that does satisfy § 7-1301.03(13) and that DDS preliminarily determines can provide habilitation services consistent with the individual's needs and supervision or security sufficient to prevent the individual from causing injury to others as a result of the individual's mental retardation.

(Mar. 3, 1979, D.C. Law 2-137, § 312a, as added Oct. 17, 2002, D.C. Law 14-199, § 2(h), 49 DCR 7647; Mar. 14, 2007, D.C. Law 16-264, § 301(g), 54 DCR 818.)

Effect of amendments. — D.C. Law 16-264 substituted "DDS" for "MRDDA" throughout the section.

Emergency legislation. — For temporary (90 day) amendment of section, see § 301(g) of Developmental Disabilities Services Management Reform Emergency Amendment Act of

2006 (D.C. Act 16-672, December 28, 2006, 54 DCR 1155).

Legislative history of Law 14-199. — For Law 14-199, see notes following § 7-1301.03.

Legislative history of Law 16-264. — For Law 16-264, see notes following § 7-1301.03.

§ 7-1303.13. Effect of determination of incompetency to refuse commitment.

A determination by the Court under this subchapter that an individual 14 years of age or older is incompetent to refuse commitment shall not be relevant to a determination of the individual's competency with respect to other matters not considered by the Court.

(Mar. 3, 1979, D.C. Law 2-137, § 313, 25 DCR 5094.)

Prior Codifications. — 1981 Ed., § 6-1933. 1973 Ed., § 6-1666.

Legislative history of Law 2-137. — For

legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

§ 7-1303.14. Rules and regulations governing respite care.

(a) The Department on Disability Services shall promulgate rules and regulations governing the provision of respite care for persons with mental

retardation. These shall provide that periods of respite care shall not exceed 42 days in a 12-month period without specific authorization by the Court after a hearing conducted in accordance with subchapter IV of this chapter.

(b) Should any person be detained for respite care for a period exceeding 42 days in a 12-month period without specific authorization by the Court after a hearing conducted in accordance with subchapter IV of this chapter, he or she shall be promptly discharged.

(Mar. 3, 1979, D.C. Law 2-137, § 314, 25 DCR 5094; Mar. 14, 2007, D.C. Law 16-264, § 301(h), 54 DCR 818; Apr. 24, 2007, D.C. Law 16-305, § 26(i), 53 DCR 6198.)

Cross references. — Mental health information, refusal or limitation on disclosures, see § 7-1202.06.

Rights of mentally retarded citizens, discharge following requests by parent, guardian or person committed, hearings, see § 7-1303.08.

Rights of mentally retarded citizens, effective date of chapter, see § 7-1306.05.

Prior Codifications. — 1981 Ed., § 6-1934. 1973 Ed., § 6-1667.

Effect of amendments. — D.C. Law 16-264, in subsec. (a), substituted "Department on Disability Services" for "Department of Human Services".

D.C. Law 16-305, in subsec. (a), substituted "persons with mental retardation" for "mentally retarded persons".

Emergency legislation. — For temporary

(90 day) amendment of section, see § 301(h) of Developmental Disabilities Services Management Reform Emergency Amendment Act of 2006 (D.C. Act 16-672, December 28, 2006, 54 DCR 1155).

Legislative history of Law 2-137. — For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 16-264. — For Law 16-264, see notes following § 7-1301.03.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 7-531.01.

References in text. — The Department of Human Resources was replaced by the Department of Human Services pursuant to Reorganization Plan No. 2 of 1979, dated February 21, 1980.

CASE NOTES

In general.

District council, in enacting Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, specifically intended provision allowing transfer of mentally retarded persons without prior notice and court approval solely for purpose of respite care to give respite to family caring for the mentally retarded person when the family needed to be temporarily away, all in an effort to promote and maintain close family ties. D.C. Code 1981, §§ 6-1902(23), 6-1934. In re Williams, 471 A.2d 263, 1984 D.C. App. LEXIS 300 (1984).

"Guardian," as used in Mentally Retarded Citizens Constitutional Rights and Dignity Act provision permitting transfer of mentally retarded person without prior notice and court approval solely for purpose of respite care, does not include a government entity such as the Department of Human Services, even if the entity acts as a provider of care to a mentally retarded person, in light of emphasis in legislative history on maintaining family ties with mentally retarded person. D.C. Code 1981, §§ 6-1902(23), 6-1934. In re Williams, 471 A.2d 263, 1984 D.C. App. LEXIS 300 (1984).

Subchapter IV. Hearing and Review Procedures.

§ 7-1304.01. Commencement of commitment proceedings; filing of written petition.

Proceedings for the commitment of an individual pursuant to subchapter III of this chapter shall be commenced by the filing of a written petition with the Court in the manner and form prescribed by the Court. The petition may be

filed by a parent or guardian with respect to an individual who is or is believed to have mental retardation. If filed by the parent or guardian, a copy of the petition shall be served on the respondent and on his or her counsel, retained or appointed pursuant to § 7-1304.02. The petition may be filed by the District in the case of an individual with mental retardation found incompetent in a criminal case. If filed by the District, a copy of the petition shall be served on the individual, the individual's counsel, the individual's parent or guardian, and the individual's mental retardation advocate.

(Mar. 3, 1979, D.C. Law 2-137, § 401, 25 DCR 5094; Oct. 17, 2002, D.C. Law 14-199, § 2(i), 49 DCR 7647; Apr. 24, 2007, D.C. Law 16-305, § 26(j), 53 DCR 6198.)

Section references. — This section is referred to in § 7-1304.03.

Prior Codifications. — 1981 Ed., § 6-1941. 1973 Ed., § 6-1668.

Effect of amendments. — D.C. Law 14-199 added the last sentence.

D.C. Law 16-305 substituted "have mental retardation" for "be mentally retarded".

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(i) of Civil Commitment of Citizens with Mental Retardation Emergency Amendment Act of 2002 (D.C. Act 14-383, June 12, 2002, 49 DCR 5701).

For temporary (90 day) amendment of section, see § 2(i) of Civil Commitment of Citizens with Mental Retardation Legislative Review Emergency Amendment Act of 2002 (D.C. Act 14-454, July 23, 2002, 49 DCR 8096).

Legislative history of Law 2-137. — For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 14-199. — For Law 14-199, see notes following § 7-1301.03.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 7-531.01.

§ 7-1304.02. Representation by counsel.

Individuals whose admission to a facility under § 7-1303.02 has been questioned on grounds of their competency or the voluntariness of the admission, have the right to be represented by counsel, retained or appointed by the Court, in any proceeding held before the Court in accordance with § 7-1303.02(c), and they shall be informed by the Court of this right. Respondents shall be represented by counsel in any proceeding before the Court, and shall be so informed by the Court. If an individual whose admission is questioned requests the appointment of counsel or if a respondent fails or refuses to obtain counsel, the Court shall appoint counsel to represent the individual or respondent. Whenever possible, counsel shall be appointed who has had experience in the mental retardation area. Counsel appointed to represent respondents, and counsel appointed to represent individuals whose admission has been questioned but who are unable to pay for such counsel, shall be awarded compensation by the Court for his or her services in an amount determined by the Court to be fair and reasonable.

(Mar. 3, 1979, D.C. Law 2-137, § 402, 25 DCR 5094.)

Section references. — This section is referred to in § 7-1304.01.

Prior Codifications. — 1981 Ed., § 6-1942. 1973 Ed., § 6-1669.

Legislative history of Law 2-137. — For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

§ 7-1304.03. Comprehensive evaluation report and individual habilitation plan required; contents; copies.

(a) If a petition filed in accordance with § 7-1304.01 is not accompanied by a comprehensive evaluation report based on an evaluation which has been performed within 6 months prior to the hearing and an individual habilitation plan which has been prepared within 30 days of the filing of the petition, the Court shall immediately order that a comprehensive evaluation be conducted and an individual habilitation plan be written.

(b) A written report setting forth the results of the comprehensive evaluation and a copy of the habilitation plan shall be submitted to the Court. The report shall indicate:

(1) Whether or to what degree the individual or respondent has mental retardation;

(2) What habilitation is needed; and

(3) The record of habilitation and care, if any.

(c) The individual habilitation plan shall be developed by the same persons who conduct the comprehensive evaluation (except where the comprehensive evaluation has been performed by persons not geographically accessible to the District) working jointly with the person who is the subject of the plan, and such person's parent or guardian who petitioned for the commitment. In cases where the comprehensive evaluation has been performed by persons not geographically accessible to the District, the Court shall designate other appropriate and professionally qualified persons to develop the plan. The plan shall contain the following:

(1) A statement of the nature of the specific strengths, limitations and specific needs of the person who is the subject of the plan;

(2) A description of intermediate and long-range habilitation goals with a projected timetable for their attainment;

(3) A statement of, and an explanation for, the plan of habilitation designed to achieve these intermediate and long-range goals;

(4) A statement of the objective criteria, and an evaluation procedure and schedule for determining whether the goals are being achieved;

(5) A statement of the least restrictive setting for habilitation necessary to achieve the habilitation goals; and

(6) Criteria for release to less restrictive settings for habilitation and living, including criteria for discharge and a projected date for discharge if commitment is recommended by the plan.

(d) A copy of the report and the plan shall be provided to the individual or respondent and his or her counsel, and to the parent or guardian if the petition was filed under § 7-1303.04 or § 7-1303.06, at least 10 days prior to the hearing. If the petition was accompanied by a comprehensive evaluation and plan, copies of the report and plan shall be provided to the respondent and his or her counsel within 3 days of the filing of the petition.

(Mar. 3, 1979, D.C. Law 2-137, § 403, 25 DCR 5094; Apr. 24, 2007, D.C. Law 16-305, § 26(k), 53 DCR 6198.)

Section references. — This section is referred to in §§ 7-1303.04, 7-1303.06, 7-1304.06a, and 7-1305.04.

Prior Codifications. — 1981 Ed., § 6-1943. 1973 Ed., § 6-1670.

Effect of amendments. — D.C. Law 16-305 substituted “has mental retardation” for “is mentally retarded”.

Legislative history of Law 2-137. — For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 7-531.01.

CASE NOTES

In general.

Mildly retarded adult could not require District of Columbia to provide him and his mentally retarded wife with a supervised apartment under Mentally Retarded Citizens Constitutional Rights and Dignity Act; mildly retarded adult was unwilling to take part in range of services that Bureau of Community Services determined were necessary to his habilitation, including counseling, medical services and group home. D.C. Code 1981, § 6-1901 et seq. In re G.T., 611 A.2d 537, 1992 D.C. App. LEXIS 192 (1992).

Even though transfer by Department of Human Services of mentally retarded patient who was hallucinating to a more restrictive setting than her individual habilitation plan called for was contrary to applicable statute because effected without notice to counsel and without approval by the court, legal imperfection of her original detention at more restrictive setting was remedied by hearing held by trial court on

patient's habeas corpus petition challenging transfer and her subsequent enforced residence at the restrictive facility, and by trial court's ruling that her confinement was warranted under the circumstances. D.C. Code 1981, §§ 6-1929(a, c), 6-1943. In re Williams, 471 A.2d 263, 1984 D.C. App. LEXIS 300 (1984).

When the habilitation plan does not specify each step to be taken toward achievement of the person's goals, except to suggest a token-economy system, it must be presumed that the plan assumes up-to-date, widely accepted educational techniques tailored to the mentally retarded. It may not be assumed that achievement of the goals of the plan by any old method, e.g. punishment, aversive stimuli, accident, will do. *Maza v. District of Columbia*, 110 WLR 2229 (Super. Ct. 1982).

Assuming the habilitation plan to have been properly drawn up according to this section, the plan must be followed. *Maza v. District of Columbia*, 110 WLR 2229 (Super. Ct. 1982).

§ 7-1304.04. Payment for independent comprehensive evaluation and habilitation plan.

If the respondent demonstrates that a comprehensive evaluation of a person with mental retardation failed to comply substantially with accepted professional standards and that sound professional judgement was not exercised in the performance of the evaluation, the court, upon a motion of the respondent, may order an independent comprehensive evaluation of the person or an individual habilitation plan at the District's expense if the person is unable to pay.

(Mar. 3, 1979, D.C. Law 2-137, § 404, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(j), 42 DCR 3684.)

Prior Codifications. — 1981 Ed., § 6-1944. 1973 Ed., § 6-1671.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 4(b) of Human Services Spending Reduction Temporary Amendment Act of 1995 (D.C. Law 11-29, July 25, 1995, law notification 42 DCR 4002).

Emergency legislation. — For temporary

amendment of section, see § 4(b) of the Human Services Spending Reduction Emergency Amendment Act of 1995 (D.C. Act 11-35, April 11, 1995, 42 DCR 1834) and § 4(b) of the Human Services Spending Reduction Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-104, July 21, 1995, 42 DCR 4014).

For temporary amendment of section, see

§ 506(j) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative history of Law 2-137. — For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 7-1301.02.

§ 7-1304.05. Hearing conducted promptly.

(a) The hearing in commitment proceedings shall be conducted promptly after filing of the petition pursuant to § 7-1303.04(a).

(b) A status hearing shall be held promptly after filing of the petition pursuant to § 7-1303.04(b-1).

(Mar. 3, 1979, D.C. Law 2-137, § 405, 25 DCR 5094; Oct. 17, 2002, D.C. Law 14-199, 2(j), 49 DCR 7647.)

Prior Codifications. — 1981 Ed., § 6-1945. 1973 Ed., § 6-1672.

Effect of amendments. — D.C. Law 14-199 designated subsec. (a), and in that subsection, substituted “petition pursuant to § 7-1303.04(a)” for “petition”; and added subsec. (b).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(j) of Civil Commitment of Citizens with Mental Retardation Emergency Amendment Act of 2002 (D.C. Act 14-383, June 12, 2002, 49 DCR 5701).

For temporary (90 day) amendment of section, see § 2(j) of Civil Commitment of Citizens with Mental Retardation Legislative Review Emergency Amendment Act of 2002 (D.C. Act 14-454, July 23, 2002, 49 DCR 8096).

Legislative history of Law 2-137. — For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 14-199. — For Law 14-199, see notes following § 7-1301.03.

§ 7-1304.06. Hearings conducted in informal manner; procedural rights at hearing.

Except as provided in § 7-1304.06a, hearings shall be conducted in as informal a manner as may be consistent with orderly procedure. Individuals whose admission has been questioned or respondents have the right to be present during hearings and to testify, but shall not be compelled to testify, and shall be so advised by the Court. They shall have the right to call witnesses and present evidence, and to cross-examine opposing witnesses. The presence of the respondent may be waived only if the Court finds that the respondent has knowingly and voluntarily waived his or her right to be present, or if the Court determines that the respondent is unable to be present by virtue of his or her physically handicapping condition.

(Mar. 3, 1979, D.C. Law 2-137, § 406, 25 DCR 5094; Oct. 17, 2002, D.C. Law 14-199, § 2(k), 49 DCR 7647.)

Prior Codifications. — 1981 Ed., § 6-1946. 1973 Ed., § 6-1673.

Effect of amendments. — D.C. Law 14-199 substituted “Except as provided in § 7-1304.06a, hearings” for “Hearings”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(k) of Civil Commitment of Citizens with Mental Re-

tardation Emergency Amendment Act of 2002 (D.C. Act 14-383, June 12, 2002, 49 DCR 5701).

For temporary (90 day) addition of § 7-1304.06a, see § 2(l) of Civil Commitment of Citizens with Mental Retardation Emergency Amendment Act of 2002 (D.C. Act 14-383, June 12, 2002, 49 DCR 5701).

For temporary (90 day) amendment of sec-

tion, see § 2(k) of Civil Commitment of Citizens with Mental Retardation Legislative Review Emergency Amendment Act of 2002 (D.C. Act 14-454, July 23, 2002, 49 DCR 8096).

For temporary (90 day) addition of § 7-1304.06a, see § 2(l) of Civil Commitment of Citizens with Mental Retardation Legislative Review Emergency Amendment Act of 2002 (D.C. Act 14-454, July 23, 2002, 49 DCR 8096).

Legislative history of Law 2-137. — For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 14-199. — For Law 14-199, see notes following § 7-1301.03.

§ 7-1304.06a. Hearing and determination by Court or jury.

(a) For a commitment hearing on a petition filed pursuant to § 7-1303.04(b-1), an individual found incompetent in a criminal case may demand a jury trial, and shall be so informed of this right. The demand shall be made at the status hearing held pursuant to § 7-1304.05(b). If a timely demand for jury trial is not made, the Court shall serve as the factfinder at the hearing. A hearing by the Court or jury shall be accorded with all reasonable speed.

(b) The comprehensive evaluation report and individual habilitation plan required by § 7-1304.03 shall be completed prior to the hearing.

(c) The individual found incompetent in a criminal case shall have the right to be present during the trial or hearings and to testify, but shall not be compelled to testify, and shall be so advised by the Court. The individual shall have the right to be represented by counsel, retained or appointed by the Court, in any hearing or trial, and shall be so informed by the Court of this right. The individual shall have the right to call witnesses and present evidence, and to cross-examine opposing witnesses.

(d) If the Court or jury finds that the individual does not have mental retardation or that the individual is not likely to cause injury to others as a result of the individual's mental retardation if allowed to remain at liberty, the Court shall dismiss the petition. If the Court or jury finds that the individual has mental retardation and is likely to cause injury to others as a result of the individual's mental retardation if allowed to remain at liberty, the Court shall order commitment to DDS for placement in a facility that would be the least restrictive means of providing the habilitation indicated by the individual habilitation plan required under § 7-1304.03 and of preventing the individual from causing injury to others as a result of the individual's mental retardation.

(Mar 3, 1979, D.C. Law 2-137, § 406a, as added Oct. 17, 2002, D.C. Law 14-199, § 2(l), 49 DCR 7647; Mar. 14, 2007, D.C. Law 16-264, § 301(i), 54 DCR 818; Apr. 24, 2007, D.C. Law 16-305, § 27, 53 DCR 6198.)

Effect of amendments. — D.C. Law 16-264, in subsec. (d), substituted “DDS” for “MRDDA”.

D.C. Law 16-305, in subsec. (d), substituted “does not have mental retardation” for “is not mentally retarded” and “has mental retardation” for “is mentally retarded”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 301(i) of Developmental Disabilities Services Manage-

ment Reform Emergency Amendment Act of 2006 (D.C. Act 16-672, December 28, 2006, 54 DCR 1155).

Legislative history of Law 14-199. — For Law 14-199, see notes following § 7-1301.03.

Legislative history of Law 16-264. — For Law 16-264, see notes following § 7-1301.03.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 7-531.01.

§ 7-1304.07. **Standard of proof.**

(a) If the petition was filed pursuant to § 7-1303.04(a), the parent or guardian, or his or her counsel if so represented, shall present evidence which shows beyond a reasonable doubt that the respondent is not competent to refuse commitment.

(b) If the petition was filed pursuant to § 7-1303.04(b-1), the District shall present clear and convincing evidence that shows that the respondent is likely to cause injury to others as a result of mental retardation if allowed to remain at liberty.

(Mar. 3, 1979, D.C. Law 2-137, § 407, 25 DCR 5094; Oct. 17, 2002, D.C. Law 14-199, 2(m), 49 DCR 7647.)

Prior Codifications. — 1981 Ed., § 6-1947. 1973 Ed., § 6-1674.

Effect of amendments. — D.C. Law 14-199 designated subsec. (a), and in that subsection, substituted “§ 7-1303.04(a)” for “§ 7-1303.04”; and added subsec. (b).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(m) of Civil Commitment of Citizens with Mental Retardation Emergency Amendment Act of 2002 (D.C. Act 14-383, June 12, 2002, 49 DCR 5701).

For temporary (90 day) amendment of section, see § 2(m) of Civil Commitment of Citizens with Mental Retardation Legislative Review Emergency Amendment Act of 2002 (D.C. Act 14-454, July 23, 2002, 49 DCR 8096).

Legislative history of Law 2-137. — For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 14-199. — For Law 14-199, see notes following § 7-1301.03.

CASE NOTES

In general.

In ruling on motion to dismiss petition to commit individual to facility for the mentally retarded, trial judge was not required to articulate standard or application thereof, and in absence of evidence to the contrary, Court of Appeals will presume that trial judge understood and applied the correct standard. D.C. Code 1981, § 6-1947. In re Moses, 659 A.2d 829, 1995 D.C. App. LEXIS 115 (1995).

In proceeding on petition for commitment to facility for the mentally retarded, under the Rights of the Mentally Retarded Citizens Act, Court of Appeals will overturn trial court's determination of competency only where evidence is such that, as matter of law, trier of fact would be compelled to find beyond reasonable doubt that individual was incompetent. D.C. Code 1981, §§ 6-1921, 6-1947. In re Moses, 659 A.2d 829, 1995 D.C. App. LEXIS 115 (1995).

§ 7-1304.08. **Hearings closed to public; request for open hearing.**

Hearings shall be closed to the public unless the person with mental retardation, or his or her counsel, requests that a hearing be open to the public.

(Mar. 3, 1979, D.C. Law 2-137, § 408, 25 DCR 5094; Apr. 24, 2007, D.C. Law 16-305, § 26(l), 53 DCR 6198.)

Prior Codifications. — 1981 Ed., § 6-1948. 1973 Ed., § 6-1675.

Effect of amendments. — D.C. Law 16-305 substituted “the person with mental retardation” for “the mentally retarded person”.

Legislative history of Law 2-137. — For

legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 7-531.01.

§ 7-1304.09. Disposition orders by Court.

(a) Upon completion of the hearing on a petition filed pursuant to § 7-1303.04(a), the Court shall order that a respondent shall not be committed to a facility if the Court finds that:

(1) The respondent is not at least moderately mentally retarded;

(2) A respondent 14 years of age or older is competent to refuse commitment; or

(3) The respondent is not a resident of the District of Columbia.

(b) Only if the Court determines that the conditions set forth in § 7-1303.04(b) and § 7-1303.06 are satisfied shall it order commitment to a facility consistent with the comprehensive evaluation and individual habilitation plan of the person with mental retardation.

(c) If the Court determines, pursuant to subsections (a) and (b) of this subsection [*sic*], that a respondent should not be committed to a facility, the Court may order that the respondent undergo such nonresidential habilitation and care as may be appropriate, necessary, and available, or it may order no habilitation and care.

(d) For persons whose admission to facilities has been questioned under § 7-1303.02, the Court shall enter an appropriate order as set forth under that section.

(Mar. 3, 1979, D.C. Law 2-137, § 409, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(k), 42 DCR 3684; Oct. 17, 2002, D.C. Law 14-199, § 2(n), 49 DCR 7647; Apr. 24, 2007, D.C. Law 16-305, § 26(m), 53 DCR 6198.)

Prior Codifications. — 1981 Ed., § 6-1949. 1973 Ed., § 6-1676.

Effect of amendments. — D.C. Law 14-199, in subsec. (a), substituted “hearing on a petition filed pursuant to § 7-1303.04(a)” for “hearing”; in subsec. (b), substituted “§ 7-1303.04(b)” for “§ 7-1303.04”; and in subsec. (c), substituted “determines, pursuant to subsections (a) and (b) of this subsection,” for “determines”.

D.C. Law 16-305, in subsec. (b), substituted “the person with mental retardation” for “the mentally retarded person”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 505(k) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

For temporary (225 day) amendment of section, see § 4(c) of Human Services Spending Reduction Temporary Amendment Act of 1995 (D.C. Law 11-29, July 25, 1995, law notification 42 DCR 4002).

Emergency legislation. — For temporary amendment of section, see § 505(k) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

For temporary amendment of section, see § 4(c) of the Human Services Spending Reduction Emergency Amendment Act of 1995 (D.C. Act 11-35, April 11, 1995, 42 DCR 1834) and § 4(c) of the Human Services Spending Reduction Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-104, July 21, 1995, 42 DCR 4014).

For temporary amendment of section, see § 506(k) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

For temporary (90 day) amendment of section, see § 2(n) of Civil Commitment of Citizens with Mental Retardation Emergency Amendment Act of 2002 (D.C. Act 14-383, June 12, 2002, 49 DCR 5701).

For temporary (90 day) amendment of section, see § 2(n) of Civil Commitment of Citizens with Mental Retardation Legislative Review Emergency Amendment Act of 2002 (D.C. Act 14-454, July 23, 2002, 49 DCR 8096).

Legislative history of Law 2-137. — For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 14-199. — For Law 14-199, see notes following § 7-1301.03.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 7-531.01.

§ 7-1304.10. Appeal of commitment order.

Any commitment order of the Court may be appealed in a like manner as other civil actions.

(Mar. 3, 1979, D.C. Law 2-137, § 410, 25 DCR 5094.)

Prior Codifications. — 1981 Ed., § 6-1950. 1973 Ed., § 6-1677.

legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 2-137. — For

§ 7-1304.11. Periodic review of commitment order.

(a) Any decision of the Court ordering commitment of a person with mental retardation to a facility pursuant to § 7-1304.09 shall be reviewed in a Court hearing annually. The individual with mental retardation shall be discharged unless there is a finding of the following:

(1) The Court determines that the individual with mental retardation has benefited from the habilitation;

(2) The facility pursuant to § 7-1304.09, its sponsoring agency, or the Department on Disability Services demonstrates that continued residential habilitation is necessary for the habilitation program;

(3) The person with mental retardation is a resident of the District of Columbia; and

(4) The person meets the requirements for commitment in §§ 7-1303.04(b) and 7-1303.06(a).

(a-1) Any decision of the Court ordering commitment of an individual found incompetent in a criminal case to DDS pursuant to § 7-1304.06a shall be reviewed in a court hearing annually. The individual shall not be discharged if the Court finds that the individual is likely to cause injury to others as a result of his or her mental retardation if allowed to regain his or her liberty.

(b) If an individual with mental retardation is discharged in accordance with the provisions of subsection (a) or subsection (a-1) of this section but continues to evidence the need for habilitation and care, it shall be the responsibility of the Department on Disability Services to arrange for suitable services for the person.

(Mar. 3, 1979, D.C. Law 2-137, § 411, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(l), 42 DCR 3684; Apr. 9, 1997, D.C. Law 11-255, § 14(b), 44 DCR 1271; Oct. 17, 2002, D.C. Law 14-199, § 2(o), 49 DCR 7647; Mar. 14, 2007, D.C. Law 16-264, § 301(j), 54 DCR 818; Apr. 24, 2007, D.C. Law 16-305, § 26(n), 53 DCR 6198.)

Prior Codifications. — 1981 Ed., § 6-1951. 1973 Ed., § 6-1678.

Effect of amendments. — D.C. Law 14-199, in subsec. (a), substituted “facility pursuant to § 7-1304.09” for “facility”; added subsec.

(a-1); and in subsec. (b), substituted “subsection (a) or subsection (a-1) of this section” for “subsection (a)(1) of this section”.

D.C. Law 16-264, in subsecs. (a) and (b), substituted “Department on Disability Ser-

vices" for "Department of Human Services"; and, in subsec. (a-1), substituted "DDS" for "MRDDA".

D.C. Law 16-305, in subsec. (a), substituted "person with mental retardation" for "mentally retarded person"; and throughout the rest of the section, substituted "individual with mental retardation" for "mentally retarded individual".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 505(l) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

For temporary (225 day) amendment of section, see § 4(d) of Human Services Spending Reduction Temporary Amendment Act of 1995 (D.C. Law 11-29, July 25, 1995, law notification 42 DCR 4002).

Emergency legislation. — For temporary amendment of section, see § 505(l) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

For temporary amendment of section, see § 4(d) of the Human Services Spending Reduction Emergency Amendment Act of 1995 (D.C. Act 11-35, April 11, 1995, 42 DCR 1834) and § 4(d) of the Human Services Spending Reduction Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-104, July 21, 1995, 42 DCR 4014).

For temporary amendment of section, see § 402(b) of the Omnibus Budget Support Emergency Act of 1995 (D.C. Act 11-44, April 28,

1995, 42 DCR 2217) and § 506(l) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

For temporary (90 day) amendment of section, see § 2(o) of Civil Commitment of Citizens with Mental Retardation Emergency Amendment Act of 2002 (D.C. Act 14-383, June 12, 2002, 49 DCR 5701).

For temporary (90 day) amendment of section, see § 2(o) of Civil Commitment of Citizens with Mental Retardation Legislative Review Emergency Amendment Act of 2002 (D.C. Act 14-454, July 23, 2002, 49 DCR 8096).

For temporary (90 day) amendment of section, see § 301(j) of Developmental Disabilities Services Management Reform Emergency Amendment Act of 2006 (D.C. Act 16-672, December 28, 2006, 54 DCR 1155).

Legislative history of Law 2-137. — For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 11-255. — For legislative history of D.C. Law 11-255, see Historical and Statutory Notes following § 7-1303.09.

Legislative history of Law 14-199. — For Law 14-199, see notes following § 7-1301.03.

Legislative history of Law 16-264. — For Law 16-264, see notes following § 7-1301.03.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 7-531.01.

CASE NOTES

ANALYSIS

Construction and application.

Construction with other statutes.

Construction and application.

Magistrate judge's order renewing respondent's commitment was not necessarily an "all or nothing" endorsement of that respondent's individual habilitation plan, as Mentally Retarded Citizens Constitutional Rights and Dignity Act guaranteed that a variety of services be provided each committed respondent. In the Matter of J.J. (Sixteen Respondents Case), 135 WLR 1045 (Super. Ct. 2007).

The admissions requirements of § 6-1922 provide a rational and comprehensible basis for excluding admissions occurring after the statute was enacted from the periodic review provisions of subsection (a) of this section, but for persons admitted before the statute was en-

acted, that basis does not apply, and exclusion from periodic review cannot be justified by reliance on it. In re Brooks, 111 WLR 1301 (Super. Ct. 1983).

Construction with other statutes.

Construing statute dealing with periodic review of an order of commitment of a mentally retarded person [D.C. Code 1981, § 6-1951] with statute dealing with handling of written petition for commitment of one who is or is believed to be mentally retarded [D.C. Code 1981, § 6-1924], commitment of individual who had benefited from habilitation she had received and was in need of a continued residential habilitation, but was not at least moderately mentally retarded, would be terminated on ground that she was not "at least moderately mentally retarded." In re Bicksler, 501 A.2d 1, 1985 D.C. App. LEXIS 534 (1985).

§ 7-1304.12. Payment of costs and expenses.

Costs and expenses of all proceedings held under this chapter shall be paid as follows:

- (1) To expert witnesses designated by the Court, an amount determined by the Court;
- (2) To attorneys appointed under this chapter, fees as authorized under the Criminal Justice Act (§ 11-2601 et seq.);
- (3) To other witnesses, the same fees and mileage as for attendance at Court to be paid upon the approval of the Court.

(Mar. 3, 1979, D.C. Law 2-137, § 412, 25 DCR 5094.)

Prior Codifications. — 1981 Ed., § 6-1952.
1973 Ed., § 6-1679.
Legislative history of Law 2-137. — For

legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

§ 7-1304.13. Mental retardation advocate.

(a) Persons with mental retardation who admit themselves to a facility under § 7-1303.02, and persons with mental retardation whose commitment is sought under § 7-1303.04 or § 7-1303.06, shall have the assistance of a mental retardation advocate in every proceeding and at each stage in such proceedings under this chapter.

(b) Upon receipt of the petition for commitment or notification of admission as provided in §§ 7-1303.02, 7-1303.04, and 7-1303.06, the Court shall appoint a qualified mental retardation advocate selected from a list of such advocates it maintains.

(c) Mental retardation advocates shall have the following powers and duties:

- (1) To inform persons subject to the procedures set forth in this chapter of their rights;
- (2) To consult with the person, his or her family and others concerned with his or her habilitation and well being;
- (3) To ensure by all means, including case referral to legal services, agencies and other practicing lawyers, that the person is afforded all rights under the law; and
- (4) To guide and assist the person in such a manner as to encourage self-reliance and enable the person to participate to the greatest extent possible in decisions concerning his or her habilitation plan, and the services to be provided under this plan.

(d) The mental retardation advocate shall receive notice and shall have the right to participate in all meetings, conferences or other proceedings relating to any matter affecting provision of services to the person including, but not limited to, comprehensive evaluation, habilitation plan, petition and hearings for commitment and for periodic review of the commitment.

(e) The mental retardation advocate shall have access to all records, reports and documents affecting his or her client.

(f) The mental retardation advocate shall have access to all personnel and facilities responsible for providing care or services to his or her client and shall

be permitted to visit and communicate with his or her client in private, and at any reasonable time without prior notice; provided, that he or she shows reasonable cause for visiting at times other than visiting hours.

(g) The mental retardation advocate shall be a person with training and experience in the field of mental retardation.

(h) Advocates shall be provided directly by the Court or by a contract with individuals or organizations including local associations for consumers of mental retardation services; however, the Court shall ensure that contracts and other arrangements for selection and provision of advocates provide that each mental retardation advocate shall be independent of any public or private agency which provides services to persons subject to this chapter.

(i) In the selection, training and development of the advocacy provision of this section, the Court shall explore and seek out potential sources of funding at the federal and District levels.

(j) Advocates shall be provided with facilities, supplies, and secretarial and other support services sufficient to enable them to carry out their duties under this chapter.

(k) All communication between advocates and their clients shall remain confidential and privileged as if between attorney and client.

(l) The Court shall promulgate such rules amplifying and clarifying this section as it deems necessary.

(m) Persons with mental retardation subject to this chapter may knowingly reject the services of a mental retardation advocate and shall be so advised by the Court. Advocates whose services have been rejected by the person with mental retardation shall not have the rights set forth in subsections (c), (d), (e), (f) and (j) of this section.

(n) If so authorized by the Court, the mental retardation advocate shall be permitted to grant, refuse, or withdraw consent on behalf of his or her client with respect to the provision of any health-care service, treatment, or procedure, consistent with the provisions of Chapter 22 of Title 21.

(Mar. 3, 1979, D.C. Law 2-137, § 413, 25 DCR 5094; Apr. 24, 2007, D.C. Law 16-305, § 26(o), 53 DCR 6198; Oct. 22, 2008, D.C. Law 17-249, § 5(b), 55 DCR 9206.)

Section references. — This section is referred to in § 7-1301.03.

Prior Codifications. — 1981 Ed., § 6-1953. 1973 Ed., § 6-1680.

Effect of amendments. — D.C. Law 16-305, in subsecs. (a) and (m), substituted “persons with mental retardation” for “mentally retarded persons”.

D.C. Law 17-249 added subsec. (n).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 4(b) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Temporary Amendment Act of 2005 (D.C. Law 16-46, February 9, 2006, law notification 53 DCR 1454).

For temporary (225 day) amendment of sec-

tion, see § 4(b) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Temporary Amendment Act of 2006 (D.C. Law 16-194, March 2, 2007, law notification 54 DCR 2492).

For temporary (225 day) amendment of section, see § 4(b) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Temporary Amendment Act of 2007 (D.C. Law 17-100, February 2, 2008, law notification 55 DCR 3407).

Emergency legislation. — For temporary (90 day) amendment of section, see § 4(b) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Emergency Amendment Act of 2005 (D.C. Act 16-190, October 28, 2005, 52 DCR 10021).

For temporary (90 day) amendment of section, see § 4(b) of Health-Care Decisions for Persons with Mental Retardation and Development Disabilities Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-262, January 26, 2006, 53 DCR 795).

For temporary (90 day) amendment of section, see § 4(b) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Amendment Act of 2006 (D.C. Act 16-480, September 25, 2006, 53 DCR 7940).

For temporary (90 day) amendment of section, see § 4(b) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-566, December 19, 2006, 53 DCR 10272).

For temporary (90 day) amendment of section, see § 4(b) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2007 (D.C. Act 17-161, October 18, 2007, 54 DCR 10932).

For temporary (90 day) amendment of section, see § 4(b) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-245, January 23, 2008, 55 DCR 1230).

For temporary (90 day) amendment, see § 5(b) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2008 (D.C. Act 17-492, August 4, 2008, 55 DCR 9167).

Legislative history of Law 2-137. — For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 7-531.01.

Legislative history of Law 17-249. — For Law 17-249, see notes following § 7-1203.03.

Subchapter V. Rights of Persons with Intellectual Disabilities.

§ 7-1305.01. Habilitation and care; habilitation program.

(a) To the extent that appropriated funds are available to carry out the purposes of this chapter, no District resident with mental retardation shall be denied habilitation, care, or both suited to the person's needs regardless of the person's age, degree of retardation, or handicapping condition.

(b) To the extent that appropriated funds are available to carry out the purposes of this chapter, each customer shall be provided a habilitation program that will maximize the customer's human abilities, enhance the customer's ability to cope with the customer's environment, and create a reasonable opportunity for progress toward the goal of independent living.

(c) Notwithstanding subsection (a) of this section, no individual subject to commitment pursuant to § 7-1304.06a shall be denied habilitation, care, or both suited to the person's needs, regardless of the person's age, degree of retardation, or handicapping condition.

(d) Notwithstanding subsection (b) of this section, an individual subject to commitment pursuant to § 7-1304.06a shall be provided a habilitation program that will maximize the person's human abilities, enhance the person's ability to cope with the person's environment, and create a reasonable opportunity for progress toward the goal of independent living.

(e)(1) Notwithstanding the availability of an appropriation to carry out the purposes of this chapter in subsections (a) and (b) of this section, effective January 1, 2012, a District resident with mental retardation who is otherwise eligible to receive supports and services from the District pursuant to this chapter must either pay the full cost of such supports and services directly to the provider or become District Medicaid-eligible and maintain District Medicaid eligibility in order to receive supports and services under this chapter from a District Medicaid-eligible provider. This requirement shall not apply to a person:

- (A) Who is a former resident of Forest Haven;
- (B) Whose needs cannot reasonably be met by a District Medicaid provider;
- (C) Who is eligible for enrollment in the D.C. Healthcare Alliance; or
- (D) Whose representative payee for the purposes of Social Security benefits is the Department of Disability Services or a provider agency who is contracted with the District to provide supports and services for that person, if the reason the person lost Medicaid eligibility is due to a failure by the representative payee.

(2) The Department of Disability Services shall work with and support the person to become District Medicaid-eligible and to maintain District Medicaid eligibility, and the person and his or her representatives, estate, or both shall fully cooperate in such efforts.

(Mar. 3, 1979, D.C. Law 2-137, § 501, 25 DCR 5094; Mar. 24, 1998, D.C. Law 12-81, § 9, 45 DCR 745; Oct. 17, 2002, D.C. Law 14-199, § 2(p), 49 DCR 7647; Sept. 14, 2011, D.C. Law 19-21, § 5002(b), 58 DCR 6226.)

Prior Codifications. — 1981 Ed., § 6-1961. 1973 Ed., § 6-1681.

Effect of amendments. — D.C. Law 14-199 added subsecs. (c) and (d).

D.C. Law 19-21 added subsec. (e).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 505(m) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

For temporary (225 day) amendment of section, see § 4(e) of Human Services Spending Reduction Temporary Amendment Act of 1995 (D.C. Law 11-29, July 25, 1995, law notification 42 DCR 4002).

Emergency legislation. — For temporary amendment of section, see § 505(m) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

For temporary amendment of section, see § 4(e) of the Human Services Spending Reduction Emergency Amendment Act of 1995 (D.C. Act 11-35, April 11, 1995, 42 DCR 1834) and § 4(e) of the Human Services Spending Reduction Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-104, July 21, 1995, 42 DCR 4014).

For temporary amendment of section, see § 506(m) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

For temporary amendment of section, see § 506(n) of the Omnibus Budget Support Con-

gressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

For temporary (90 day) amendment of section, see § 2(p) of Civil Commitment of Citizens with Mental Retardation Emergency Amendment Act of 2002 (D.C. Act 14-383, June 12, 2002, 49 DCR 5701).

For temporary (90 day) amendment of section, see § 2(p) of Civil Commitment of Citizens with Mental Retardation Legislative Review Emergency Amendment Act of 2002 (D.C. Act 14-454, July 23, 2002, 49 DCR 8096).

Legislative history of Law 2-137. — For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1997," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

Legislative history of Law 14-199. — For Law 14-199, see notes following § 7-1301.03.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 7-731.

CASE NOTES

In general.

Mildly retarded adult could not require District of Columbia to provide him and his mentally retarded wife with a supervised apartment under Mentally Retarded Citizens Constitutional Rights and Dignity Act; mildly retarded adult was unwilling to take part in range of services that Bureau of Community Services determined were necessary to his habilitation, including counseling, medical services and group home. D.C. Code 1981, § 6-1901 et seq. In re G.T., 611 A.2d 537, 1992 D.C. App. LEXIS 192 (1992).

Magistrate judge's order renewing respon-

dent's commitment was not necessarily an "all or nothing" endorsement of that respondent's individual habilitation plan, as Mentally Retarded Citizens Constitutional Rights and Dignity Act guaranteed that a variety of services be provided each committed respondent. In the Matter of J.J. (Sixteen Respondents Case), 135 WLR 1045 (Super. Ct. 2007).

The rights to a habilitation program suited to their needs for all mentally retarded residents is guaranteed by this section, and when denied, triggers the remedy in § 6-1973(b). Maza v. District of Columbia, 110 WLR 2229 (Super. Ct. 1982).

§ 7-1305.02. Living conditions; teaching of skills.

Customers shall be provided with the least restrictive and most normal living conditions possible. Individuals with mental retardation found incompetent in a criminal case shall be provided with the least restrictive and most normal living conditions possible consistent with preventing the individual from causing injury to others as a result of the individual's mental retardation. This standard shall apply to dress, grooming, movement, use of free time, and contact and communication with the community, including access to services outside of the institution or residential facility. Customers shall be taught skills that help them learn how to effectively utilize their environment and how to make choices necessary for daily living and, in the case of an individual committed under § 7-1304.06a, to refrain from committing crimes of violence or sex offenses.

(Mar. 3, 1979, D.C. Law 2-137, § 502, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(n), 42 DCR 3684; Oct. 17, 2002, D.C. Law 14-199, § 2(q), 49 DCR 7647.)

Prior Codifications. — 1981 Ed., § 6-1962. 1973 Ed., § 6-1682.

Effect of amendments. — D.C. Law 14-199 rewrote the section which had read as follows: "Customers shall be provided with the least restrictive and most normal living conditions possible. This standard shall apply to dress, grooming, movement, use of free time, and contact and communication with the community, including access to services outside of the institution or residential facility. Customers shall be taught skills that help them learn how to effectively utilize their environment and how to make choices necessary for daily living."

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 505(n) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

Emergency legislation. — For temporary amendment of section, see § 505(n) of the Mul-

tiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

For temporary (90 day) amendment of section, see § 2(q) of Civil Commitment of Citizens with Mental Retardation Emergency Amendment Act of 2002 (D.C. Act 14-383, June 12, 2002, 49 DCR 5701).

For temporary (90 day) amendment of section, see § 2(q) of Civil Commitment of Citizens with Mental Retardation Legislative Review Emergency Amendment Act of 2002 (D.C. Act 14-454, July 23, 2002, 49 DCR 8096).

Legislative history of Law 2-137. — For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 14-199. — For Law 14-199, see notes following § 7-1301.03.

CASE NOTES

ANALYSIS

Duty of court.

In general.

Normal living conditions.

Teaching of skills.

Duty of court.

Given broad remedial purpose of Mentally Retarded Citizens Constitutional Rights and Dignity Act, court's inherent equitable power, statutory requirement of an annual review based on a comprehensive evaluation of each committed respondent, and the specific guarantees enumerated in the Act regarding the care to be provided to committed respondents, court has responsibility to ensure proper habilitation for each individual in those areas that are specifically enumerated in the Act. In the Matter of J.J. (Sixteen Respondents Case), 135 WLR 1045 (Super. Ct. 2007).

In general.

Medical issues, while clearly of highest importance to a committed respondent's wellbeing, are not one of the enumerated guarantees in the Mentally Retarded Citizens Constitutional Rights and Dignity Act. In the Matter of J.J. (Sixteen Respondents Case), 135 WLR 1045 (Super. Ct. 2007).

Normal living conditions.

Order requiring case conference for committed respondent, to remedy inadequacy in her habilitation leading to her boredom, was within court's authority under Mentally Retarded Citizens Constitutional Rights and Dignity Act. In the Matter of J.J. (Sixteen Respondents Case), 135 WLR 1045 (Super. Ct. 2007).

Assuming review of order was not moot, order regarding exploration of a Braille program for committed respondent with sight problems fell within guarantee of Mentally Retarded Citizens Constitutional Rights and Dignity Act. In the Matter of J.J. (Sixteen Respondents Case), 135 WLR 1045 (Super. Ct. 2007).

Assuming review of order was not moot, order requiring Mental Retardation and Development Disabilities Administration (MRDDA) to provide committed respondent with a rental, fully operational wheelchair was essential to effectuate guarantee of Mentally Retarded Citizens Constitutional Rights and Dignity Act regarding respondent's movement. In the Matter of J.J. (Sixteen Respondents Case), 135 WLR 1045 (Super. Ct. 2007).

General order requiring Mental Retardation and Development Disabilities Administration (MRDDA) to explore all possible sources of therapeutic recreational and water-based activities for MRDDA consumers exceeded magistrate judge's authority under the Mentally Retarded Citizens Constitutional Rights and Dignity Act. In the Matter of J.J. (Sixteen Respondents Case), 135 WLR 1045 (Super. Ct. 2007).

Portion of order issued following annual review based on a comprehensive evaluation of committed respondent, addressing respondent's communication goals, was reasonable to ensure respondent's statutory right to contact and communication with the community. In the Matter of J.J. (Sixteen Respondents Case), 135 WLR 1045 (Super. Ct. 2007).

Teaching of skills.

Order requiring integration of language and words that were part of job development into speech therapy of committed respondent fell within guarantee of Mentally Retarded Citizens Constitutional Rights and Dignity Act. In the Matter of J.J. (Sixteen Respondents Case), 135 WLR 1045 (Super. Ct. 2007).

Order issued following annual review based on a comprehensive evaluation of committed respondent, regarding his job opportunities and reading and writing program, fell within guarantee of Mentally Retarded Citizens Constitutional Rights and Dignity Act. In the Matter of J.J. (Sixteen Respondents Case), 135 WLR 1045 (Super. Ct. 2007).

§ 7-1305.03. Least restrictive conditions.

Customers shall have a right to the least restrictive conditions necessary and available to achieve the purposes of habilitation. To this end, the institution or residential facility shall move customers from: (1) more to less structured living; (2) larger to smaller facilities; (3) larger to smaller living units; (4) group to individual residence; (5) segregated to integrated community living; or (6) dependent to independent living. If at any time the Director decides that a customer should be transferred out of the facility to a less

restrictive environment, he or she shall immediately notify the Court pursuant to § 7-1303.09. Notice shall be provided to the customer, the customer's counsel, the customer's mental retardation advocate, if one has been appointed, and the customer's parent or guardian who petitioned for the commitment.

(Mar. 3, 1979, D.C. Law 2-137, § 503, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(o), 42 DCR 3684.)

Prior Codifications. — 1981 Ed., § 6-1963. 1973 Ed., § 6-1683.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 505(o) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

For temporary (225 day) amendment of section, see § 4(f) of Human Services Spending Reduction Temporary Amendment Act of 1995 (D.C. Law 11-29, July 25, 1995, law notification 42 DCR 4002).

Emergency legislation. — For temporary amendment of section, see § 505(o) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

For temporary amendment of section, see § 4(f) of the Human Services Spending Reduction Emergency Amendment Act of 1995 (D.C.

Act 11-35, April 11, 1995, 42 DCR 1834) and § 4(f) of the Human Services Spending Reduction Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-104, July 21, 1995, 42 DCR 4014).

For temporary amendment of section, see § 402(c) of the Omnibus Budget Support Emergency Act of 1995 (D.C. Act 11-44, April 28, 1995, 42 DCR 2217) and § 506(o) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative history of Law 2-137. — For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 7-1301.02.

§ 7-1305.04. Comprehensive evaluation and individual habilitation plan.

(a)(1) Prior to each customer's commitment under this chapter, the customer shall receive, pursuant to § 7-1304.03, a comprehensive evaluation or screening and an individual habilitation plan. Within 30 days of a customer's admission pursuant to § 7-1303.02, the customer shall have a comprehensive evaluation or screening and an individual habilitation plan.

(2) All individual habilitation plans shall include:

(A) Current information on whether the customer has the capacity to grant, refuse, or withdraw consent to any ongoing medical treatment and:

(i) Has executed or could execute a durable power of attorney in accordance with § 21-2205; or

(ii) Has an individual reasonably available, mentally capable, and willing to provide substituted consent pursuant to § 21-2210; and

(B) A current durable power of attorney or, in the absence of a durable power of attorney, documentation that the person has been offered an opportunity to execute a durable power of attorney pursuant to § 21-2205 and has declined.

(3) Annual reevaluations or screenings of the customer shall be provided as determined by the customer's interdisciplinary team. Annual reevaluations and screenings shall include a review of and update to the individual habilitation plan on whether the customer:

(A) Has the capacity to grant, refuse, or withdraw consent to any ongoing medical treatment;

(B) Has executed or could execute a durable power of attorney in accordance with § 21-2205;

(C) Has been offered an opportunity to execute a durable power of attorney pursuant to § 21-2205 and declined; or

(D) Has an individual reasonably available, mentally capable, and willing to provide substituted consent pursuant to § 21-2210.

(4) By April 15, 2009, the DDS shall establish written procedures for incorporating a review of all mental-health services, including psychotropic medications, behavioral plans, and any other psychiatric treatments, into the annual reevaluations and screenings conducted by the customer's interdisciplinary team.

(5) Nothing in this subsection shall be construed as requiring any person to execute a durable power of attorney for health care.

(b) Within 10 days of a customer's commitment pursuant to § 7-1304.03, or within 30 days of admission pursuant to § 7-1303.02, the facility, the facility's sponsoring agency, or the Department on Disability Services shall:

(1) Designate each professional or staff member who is responsible for implementing or overseeing the implementation of an customer's individual habilitation plan;

(2) Designate each District agency, private agency, or service responsible for providing the habilitation included in the plan; and

(3) Specify the role and objectives of each District agency, private agency, or service with respect to the plan.

(c) To the extent of funds appropriated for the purposes of this chapter, each customer shall receive habilitation, care, or both consistent with the recommendations included in the customer's individual habilitation plan. The Department on Disability Services shall set standards for habilitation and care provided to such customers, consistent with standards set by the Accreditation Council for Services for the Mentally Retarded and Other Developmentally Disabled Persons, including staff-customer and professional-customer ratios. In the interests of continuity of care, 1 qualified mental retardation professional shall be responsible for informing the Chief Program Director, or the Director, when the customer should be released to a less restrictive setting and for continually reviewing the plan.

(d)(1) Notwithstanding the availability of an appropriation to carry out the purposes of this chapter, effective January 1, 2012, a District resident with mental retardation who is otherwise eligible to receive supports and services from the District pursuant to this chapter, consistent with the recommendations included in the individual habilitation plan, must either pay the full cost of such supports and services directly to the provider or become District Medicaid-eligible and maintain District Medicaid eligibility in order to receive supports and services under this chapter from a District Medicaid-eligible provider. This requirement shall not apply to a person:

(A) Who is a former resident of Forest Haven;

(B) Whose needs cannot reasonably be met by a District Medicaid provider;

(C) Who is eligible for enrollment in the D.C. Healthcare Alliance; or

(D) Whose representative payee for the purposes of Social Security benefits is the Department of Disability Services or a provider agency who is contracted with the District to provide supports and services for that person, if the reason the person lost Medicaid eligibility is due to a failure by the representative payee.

(2) The Department of Disability Services shall work with and support the person to become District Medicaid-eligible and to maintain District Medicaid eligibility, and the person and his or her representatives, estate, or both shall fully cooperate in such efforts.

(Mar. 3, 1979, D.C. Law 2-137, § 504, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(p), 42 DCR 3684; Mar. 14, 2007, D.C. Law 16-264, § 301(k), 54 DCR 818; Oct. 22, 2008, D.C. Law 17-249, § 5(c), 55 DCR 9206; Sept. 14, 2011, D.C. Law 19-21, § 5002(c), 58)

Section references. — This section is referred to in § 7-1305.12.

Prior Codifications. — 1981 Ed., § 6-1964. 1973 Ed., § 6-1684.

Effect of amendments. — D.C. Law 16-264, in subssecs. (b) and (c), substituted “Department on Disability Services” for “Department of Human Services”.

D.C. Law 17-249 rewrote subsec. (a), which had read as follows: “(a) Prior to each customer’s commitment pursuant to § 7-1304.03, the customer shall receive a comprehensive evaluation or screening and an individual habilitation plan. Within 30 days of a customer’s admission pursuant to § 7-1303.02, the customer shall have a comprehensive evaluation or screening and an individual habilitation plan. Annual reevaluations or screenings of the customer shall be provided as determined by the customer’s interdisciplinary team in accordance with Accreditation Council for Services for People with Developmental Disabilities Standards.”

D.C. Law 19-21 added subsec. (d).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 505(p) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

For temporary (225 day) amendment of section, see § 4(c) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Temporary Amendment Act of 2005 (D.C. Law 16-46, February 9, 2006, law notification 53 DCR 1454).

For temporary (225 day) amendment of section, see § 4(c) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Temporary Amendment Act of 2006 (D.C. Law 16-194, March 2, 2007, law notification 54 DCR 2492).

For temporary (225 day) amendment of section, see § 4(c) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Temporary Amendment Act of 2007 (D.C. Law 17-100, February 2, 2008, law notification 55 DCR 3407).

Emergency legislation. — For temporary amendment of section, see § 505(p) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

For temporary amendment of section, see § 4(g) of the Human Services Spending Reduction Emergency Amendment Act of 1995 (D.C. Act 11-35, April 11, 1995, 42 DCR 1834) and § 4(g) of the Human Services Spending Reduction Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-104, July 21, 1995, 42 DCR 4014).

For temporary amendment of section, see § 402(d) of the Omnibus Budget Support Emergency Act of 1995 (D.C. Act 11-44, April 28, 1995, 42 DCR 2217) and § 506(p) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

For temporary amendment of section, see § 402(e) of the Omnibus Budget Support Emergency Act of 1995 (D.C. Act 11-44, April 28, 1995, 42 DCR 2217) and § 506(q) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

For temporary (90 day) amendment of section, see § 4(c) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Emergency Amendment Act of 2005 (D.C. Act 16-190, October 28, 2005, 52 DCR 10021).

For temporary (90 day) amendment of section, see § 4(c) of Health-Care Decisions for Persons with Mental Retardation and Develop-

ment Disabilities Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-262, January 26, 2006, 53 DCR 795).

For temporary (90 day) amendment of section, see § 4(c) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Amendment Act of 2006 (D.C. Act 16-480, September 25, 2006, 53 DCR 7940).

For temporary (90 day) amendment of section, see § 4(c) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-566, December 19, 2006, 53 DCR 10272).

For temporary (90 day) amendment of section, see § 301(k) of Developmental Disabilities Services Management Reform Emergency Amendment Act of 2006 (D.C. Act 16-672, December 28, 2006, 54 DCR 1155).

For temporary (90 day) amendment of section, see § 4(c) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2007 (D.C. Act 17-161, October 18, 2007, 54 DCR 10932).

For temporary (90 day) amendment of section,

see § 4(c) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-245, January 23, 2008, 55 DCR 1230).

For temporary (90 day) amendment, see § 5(c) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2008 (D.C. Act 17-492, August 4, 2008, 55 DCR 9167).

Legislative history of Law 2-137. — For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 16-264. — For Law 16-264, see notes following § 7-1301.03.

Legislative history of Law 17-249. — For Law 17-249, see notes following § 7-1203.03.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 7-731.

CASE NOTES

In general.

Ordering a more expansive report to include the status of efforts made by the Bureau of Community Services or other appropriate agencies in assessing federal jobs for individuals

with mental retardation exceeded magistrate judge's authority under the Mentally Retarded Citizens Constitutional Rights and Dignity Act. In the Matter of J.J. (Sixteen Respondents Case), 135 WLR 1045 (Super. Ct. 2007).

§ 7-1305.05. Visitors; mail; access to telephones; religious practice; personal possessions; privacy; exercise; diet; medical attention; medication.

(a) Subject to restrictions by a physician for good cause, each customer has the right to receive visitors of his or her own choosing daily. Hours during which visitors may be received shall be limited only in the interest of effective treatment and the reasonable efficiency of the facility, and shall be sufficiently flexible to accommodate the individual needs of the customer and his or her visitors. Notwithstanding the above, each customer has the right to receive visits from his or her attorney, physician, psychologist, clergyman, social worker, parents or guardians, or mental retardation advocate in private at any reasonable time, irrespective of visiting hours, provided the visitor shows reasonable cause for visiting at times other than normal visiting hours.

(b) Writing material and postage stamps shall be reasonably available for the customer's use in writing letters and other communications. Reasonable assistance shall be provided for writing, addressing and posting letters and other documents upon request. The customer shall have the right to send and receive sealed and uncensored mail. The customer has the right to reasonable private access to telephones and, in case of personal emergencies when other means of communications are not satisfactory, he or she shall be afforded

reasonable use of long distance calls. A customer who is unable to pay shall be furnished such writing, postage, and telephone facilities without charge.

(c) Each customer shall have the right to follow or abstain from the practice of religion. The facility shall provide appropriate assistance in this connection including reasonable accommodations for religious worship and/or transportation to nearby religious services. Customers who do not wish to participate in religious practice shall be free from pressure to do so or to accept religious beliefs.

(d) Each customer shall have the right to a humane psychological and physical environment. He or she shall be provided a comfortable bed and adequate changes of linen and reasonable storage space, including locked space, for his or her personal possessions. A record shall be kept of each customer's personal possessions. Except when curtailed for reason of safety or therapy as documented in his or her record by a physician, he or she shall be afforded reasonable privacy in his sleeping and personal hygiene practices.

(e) Each customer shall have reasonable daily opportunities for physical exercise and outdoor exercise and shall have reasonable access to recreational areas and equipment.

(f) Each customer has the right to a nourishing, well-balanced, varied, and appetizing diet, and where ordered by a physician and/or nutritionist, to a special diet.

(g) Each customer shall have the right to prompt and adequate medical attention for any physical ailments and shall receive a complete physical examination upon admission and at least once a year thereafter.

(h) All customers have a right to be free from unnecessary or excessive medication. No medication shall be administered unless at the written or verbal order of a licensed physician, noted promptly in the patient's medical record and signed by the physician within 24 hours. Medication shall be administered only by a licensed physician, registered nurse or licensed practical nurse, or by a medical or nursing student under the direct supervision of a licensed physician or registered nurse, or by a Director acting upon a licensed physician's instructions. The attending physician shall review on a regular basis the drug regimen of each customer under his or her care. All prescriptions for psychotropic medications shall be written with a termination date, which shall not exceed 30 days. Medication shall not be used as a punishment, for the convenience of staff, as a substitute for programs, or in quantities that interfere with the customer's habilitation program.

(Mar. 3, 1979, D.C. Law 2-137, § 505, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(q), 42 DCR 3684.)

Prior Codifications. — 1981 Ed., § 6-1965. 1973 Ed., § 6-1685.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 505(q) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

For temporary (225 day) amendment of sec-

tion, see § 4(c) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Temporary Amendment Act of 2005 (D.C. Law 16-46, February 9, 2006, law notification 53 DCR 1454).

For temporary (225 day) amendment of section, see § 4(c) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Temporary Amendment Act

of 2006 (D.C. Law 16-194, March 2, 2007, law notification 54 DCR 2492).

For temporary (225 day) amendment of section, see § 4(c) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Temporary Amendment Act of 2007 (D.C. Law 17-100, February 2, 2008, law notification 55 DCR 3407).

Emergency legislation. — For temporary amendment of section, see § 505(q) of the Multiyear Budget Spending Reduction and Support

Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

Legislative history of Law 2-137. — For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 7-1301.02.

§ 7-1305.06. Prohibited psychological therapies.

No psychosurgery, convulsive therapy, experimental treatment or behavior modifications program involving aversive stimuli or deprivation of rights set forth in this subchapter shall be administered to any resident.

(Mar. 3, 1979, D.C. Law 2-137, § 506, 25 DCR 5094.)

Prior Codifications. — 1981 Ed., § 6-1966. 1973 Ed., § 6-1686.

Legislative history of Law 2-137. — For

legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

CASE NOTES

Due process.

In upholding validity of policy that directed administrator of District of Columbia's Mental Retardation and Developmental Disabilities Administration (MRDDA) to consent to medical procedures on behalf of intellectually disabled persons under certain circumstances, on prior appeal from district court's grant of summary judgment and injunctive relief in favor of plaintiffs challenging policy, Court of Appeals determined that administrator had authority to consent to medical procedures on behalf of consumers of MRDDA's services and did not

violate due process-protected liberty interests of consumers who lacked capacity to make medical decisions for themselves by authorizing elective surgeries on their behalf, and therefore law of the case doctrine applied, on remand, to bar plaintiffs' claim that, prior to enactment of temporary legislation addressing consent issue, administrator violated liberty interests of consumers by consenting to elective medical procedures on their behalf. *Does v. District of Columbia*, 593 F.Supp.2d 115, 2009 U.S. Dist. LEXIS 661 (2009).

§ 7-1305.06a. Informed consent.

(a) Except in accordance with the procedures described in subsections (b) and (c) of this section, in § 21-2212, or as otherwise provided by law, no DDS customer shall be given services pursuant to this chapter absent the customer's informed consent. In seeking informed consent, the provider or DDS shall present the customer with available options and all material information necessary to make the decision, including information about the proposed service, potential benefits and risks of the proposed service, potential benefits and risks of no service, side effects, and information about feasible alternative services, if any.

(b) If the provider or DDS reasonably believes that the customer lacks the capacity to provide informed consent for the proposed service, the provider or DDS promptly shall seek a determination of the customer's capacity in accordance with § 21-2204. If the customer is certified as incapacitated for health-care decisions in accordance with § 21-2204, DDS or the provider shall

promptly seek the provision of substituted consent from the customer's attorney-in-fact pursuant to § 21-2206 or, if no attorney-in-fact has been authorized pursuant to § 21-2205 or is reasonably available, mentally capable, and willing to act, from an individual authorized to provide substituted consent pursuant to § 21-2210.

(c) If the customer is certified as incapacitated and unable to consent to the proposed service in accordance with § 21-2204, and no attorney-in-fact or person listed in § 21-2210(a) is reasonably available, mentally capable, and willing to act:

(1) For any proposed services except psychotropic medications, the District shall petition the Court for appointment of a guardian pursuant to Chapter 20 of Title 21. The District's petition shall request the form of guardianship which is least restrictive to the incapacitated customer in duration and scope, taking into account the incapacitated customer's current mental and adaptive limitations or other conditions warranting the procedure. This subsection does not preclude any other party from petitioning the Court for appointment of a guardian.

(2) For all proposed psychotropic medications, except as described under paragraph (3) of this subsection, the provider may administer medication only when the administration of medication is accompanied by a behavioral plan and only after receiving approval from an independent panel appointed by the DDS Administrator pursuant to § 7-1305.06b.

(3) In an emergency in which a customer is experiencing a mental health crisis and in which the immediate provision of mental health treatment, including medication, is, in the written opinion of the attending physician, necessary to prevent serious injury to the customer or others, the provider may administer medication without seeking the customer's prior informed consent only to the extent necessary to terminate the emergency.

(Mar. 3, 1979, D.C. Law 2-137, § 506a, as added Oct. 22, 2008, D.C. Law 17-249, § 5(d), 55 DCR 9206.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 4(d) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Temporary Amendment Act of 2006 (D.C. Law 16-194, March 2, 2007, law notification 54 DCR 2492).

For temporary (225 day) addition, see § 4(d) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Temporary Amendment Act of 2007 (D.C. Law 17-100, February 2, 2008, law notification 55 DCR 3407).

Emergency legislation. — For temporary (90 day) addition, see § 4(d) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Amendment Act of 2006 (D.C. Act 16-480, September 25, 2006, 53 DCR 7940).

For temporary (90 day) addition, see § 4(d) of Health-Care Decisions for Persons with Devel-

opmental Disabilities Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-566, December 19, 2006, 53 DCR 10272).

For temporary (90 day) addition, see § 4(d) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2007 (D.C. Act 17-161, October 18, 2007, 54 DCR 10932).

For temporary (90 day) addition, see § 4(d) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-245, January 23, 2008, 55 DCR 1230).

For temporary (90 day) addition, see § 5(d) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2008 (D.C. Act 17-492, August 4, 2008, 55 DCR 9167).

Legislative history of Law 17-249. — For Law 17-249, see notes following § 7-1203.03.

§ 7-1305.06b. Review panel for administration of psychotropic medications.

(a) The DDS Administrator shall establish an independent panel to review all proposals to administer psychotropic medications to customers made pursuant to § 7-1305.06a(c)(2) and in accordance with the administrative procedures established by DDS in accordance with subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.]. The administrative procedures established by DDS shall be consistent with the requirements of this section.

(b) The panel shall be comprised of 3 members. The members of the panel and their employers shall be immune from suit for any claim arising from any good faith act or omission under this section. The members of the panel shall not be affiliated with the individual, the provider, or the physician seeking to administer the medication, but shall include:

(1) A board-certified psychiatrist or an advanced practice registered nurse;

(2) A licensed professional; and

(3) A customer, or, if unavailable, a mental retardation advocate or other customer advocate.

(c) The administrative procedure established by DDS for the panel shall include, at a minimum:

(1) A meeting by the panel no later than one week after DDS receives a request for consent;

(2) Written and oral notice to the customer not less than 48 hours prior to when the panel will meet;

(3) The right of the customer to be present when the panel meets and to have a representative present during any such meeting;

(4) The opportunity, at the meeting of the panel, for the customer and his or her representative to present information and to discuss the wishes of the customer;

(5) The issuance of a written decision by the panel no later than one week after the meeting of the panel, to be provided to the customer, the customer's representative, and the provider; and

(6) The right of the customer to request that the DDS Human Rights Advisory Committee or its successor entity review the decision of the panel.

(d) If the customer requests a review by the DDS Human Rights Advisory Committee or its successor entity before the decision of the panel has been implemented, the decision shall not be implemented until after the DDS Human Rights Advisory Committee or its successor entity responds to the requested review. The DDS Human Rights Advisory Committee or its successor entity shall conduct the review at its next meeting or no later than 30 days after the request, whichever is earlier, and shall issue a response promptly.

(e) The panel shall issue a written decision which may grant, refuse, or withdraw consent to the prescription of the proposed psychotropic medication. The panel shall seek to conform as closely as possible to a standard of substituted judgment or, if the customer's wishes are unknown and remain unknown after reasonable efforts to discern them, make the decision on the

basis of the customer's best interests. If the panel grants consent, the consent shall be granted for a limited period of time and shall last no longer than 9 consecutive months.

(f) For customers for whom the panel has provided consent, DDS shall offer the customer the opportunity to execute a durable power of attorney in accordance with § 21-2205 and shall continue to seek to identify one or more individuals listed in § 21-2210(a) who may be reasonably available, mentally capable, and willing to act.

(g) For customers for whom the panel has provided consent for 3 or more consecutive months, and for whom there is a reasonable likelihood that no decision-maker will become available and that the customer will not achieve capacity during the next 6 months to make decisions regarding psychotropic medications on his or her own behalf, the District shall petition the Court for appointment of a guardian pursuant to Chapter 20 of Title 21. The District's petition shall request the type of guardianship which is least restrictive to the incapacitated customer in duration and scope, taking into account the incapacitated customer's current mental and adaptive limitations or other conditions warranting the procedure. This subsection does not preclude any other party from petitioning the Court for appointment of a guardian.

(h) Refusal to consent to psychotropic medications shall not be used as evidence of a customer's incapacity.

(i) Refusal to consent to services on the basis of a valid religious objection shall not be overridden absent a specific court order requiring the provision of services.

(Mar. 3, 1979, D.C. Law 2-137, § 506b, as added Oct. 22, 2008, D.C. Law 17-249, § 5(d), 55 DCR 9206; Mar. 3, 2010, D.C. Law 18-111, § 7024, 57 DCR 181.)

Effect of amendments. — D.C. Law 18-111, in subsec. (b)(1), deleted “, subject to the availability of funds,” following “psychiatrist”.

Temporary Addition of Section. — For temporary (225 day) addition, see § 4(d) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Temporary Amendment Act of 2006 (D.C. Law 16-194, March 2, 2007, law notification 54 DCR 2492).

For temporary (225 day) addition, see § 4(d) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Temporary Amendment Act of 2007 (D.C. Law 17-100, February 2, 2008, law notification 55 DCR 3407).

Emergency legislation. — For temporary (90 day) addition, see § 4(d) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Amendment Act of 2006 (D.C. Act 16-480, September 25, 2006, 53 DCR 7940).

For temporary (90 day) addition, see § 4(d) of Health-Care Decisions for Persons with Devel-

opmental Disabilities Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-566, December 19, 2006, 53 DCR 10272).

For temporary (90 day) addition, see § 4(d) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2007 (D.C. Act 17-161, October 18, 2007, 54 DCR 10932).

For temporary (90 day) addition, see § 4(d) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-245, January 23, 2008, 55 DCR 1230).

For temporary (90 day) addition, see § 5(d) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2008 (D.C. Act 17-492, August 4, 2008, 55 DCR 9167).

For temporary (90 day) amendment of section, see § 7024 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 7024 of Fiscal Year Budget Support

Congressional Review Emergency Amendment
Act of 2009 (D.C. Act 18-260, January 4, 2010,
57 DCR 345).

Legislative history of Law 18-111. — For
Law 18-111, see notes following § 7-736.01.

Legislative history of Law 17-249. — For
Law 17-249, see notes following § 7-1203.03.

§ 7-1305.06c. Psychotropic medication review.

(a) By April 15, 2009, the DDS shall complete a psychotropic medication review for all DDS customers.

(b) By October 17, 2008, the DDS shall establish written procedures, which shall include timelines and shall identify responsible entities or individuals, for promptly implementing the recommendations for each customer identified by the psychotropic medication review.

(c) The psychotropic medication review shall be conducted by a review team that includes professionals with expertise in the prescription, use, and side effects of psychotropic medications as therapy for customers who have been dually diagnosed with mental retardation and mental illness.

(d) DDS shall establish in writing:

(1) Procedures for an initial administrative review of psychotropic medication prescriptions for all DDS customers

(2) Procedures and criteria for determining which customers receive only an initial administrative review of psychotropic medications, and which customers also receive a more detailed clinical review of psychotropic medications; and

(3) Criteria for screening and determining the clinical appropriateness of each psychotropic medication prescribed for each customer.

(e) The review team shall complete the initial administrative review of psychotropic medications. The initial administrative review of psychotropic medications shall determine, at minimum, for each DDS customer:

(1) All prescribed psychotropic medications;

(2) The diagnosis justifying each prescription;

(3) The provision of informed consent for each prescription;

(4) The presence of an accompanying behavioral plan; and

(5) Any other mental health services being provided to the customer.

(f) The review team shall conduct a clinical review of psychotropic medications when the initial administrative review meets the review team's criteria indicating that a detailed clinical review of the customer's psychotropic medication is warranted. The clinical review shall seek to determine the clinical appropriateness of each prescribed psychotropic medication and the potential for alternative approaches. The clinical review shall include, at a minimum, interviews with the customer, the prescribing professional, and the customer's residential and day service providers, if any.

(g) By no later than 30 days after completing a psychotropic medication review of a customer, the review team shall issue a written report, which shall include recommendations for:

(1) Continued use, modification, or termination of psychotropic medication;

- (2) Potential use of alternative approaches, including therapies, behavioral plans, skill development, and environmental modifications;
- (3) Informed consent, if informed consent has not been provided; and
- (4) Development of a behavioral plan, if no behavioral plan is present.

(h) A copy of the written report of the review team shall be appended to the customer's individual habilitation plan and shall be provided to:

- (1) The customer;
- (2) The customer's legal representative, if any;
- (3) The customer's mental retardation advocate, if any;
- (4) The customer's DDS case manager;
- (5) The individuals identified in the customer's individual habilitation plan as reasonably available, mentally capable, and willing to provide substituted consent pursuant to § 21-2210, if any;
- (6) The customer's residential service provider; and
- (7) The Quality Trust for Individuals with Disabilities, Inc.

(Mar. 3, 1979, D.C. Law 2-137, § 506c, as added Oct. 22, 2008, D.C. Law 17-249, § 5(d), 55 DCR 9206.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 4(d) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Temporary Amendment Act of 2006 (D.C. Law 16-194, March 2, 2007, law notification 54 DCR 2492).

For temporary (225 day) addition, see § 4(d) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Temporary Amendment Act of 2007 (D.C. Law 17-100, February 2, 2008, law notification 55 DCR 3407).

Emergency legislation. — For temporary (90 day) addition, see § 4(d) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Amendment Act of 2006 (D.C. Act 16-480, September 25, 2006, 53 DCR 7940).

For temporary (90 day) addition, see § 4(d) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Amendment Act of 2008 (D.C. Act 17-161, October 18, 2007, 54 DCR 10932).

For temporary (90 day) addition, see § 4(d) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Amendment Act of 2006 (D.C. Act 16-566, December 19, 2006, 53 DCR 10272).

For temporary (90 day) addition, see § 4(d) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-245, January 23, 2008, 55 DCR 1230).

For temporary (90 day) addition, see § 5(d) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2008 (D.C. Act 17-492, August 4, 2008, 55 DCR 9167).

Legislative history of Law 17-249. — For Law 17-249, see notes following § 7-1203.03.

§ 7-1305.07. Essential surgery in medical emergency. [Repealed].

Repealed.

(Mar. 3, 1979, D.C. Law 2-137, § 507, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(r), 42 DCR 3684; Oct. 22, 2008, D.C. Law 17-249, § 5(e), 55 DCR 9206.)

Prior Codifications. — 1981 Ed., § 6-1967. 1973 Ed., § 6-1687.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 505(r) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

For temporary (225 day) amendment of section, see § 3(a) of Mentally Retarded Citizens

Substitute Consent for Health Care Decisions and Emergency Care Definition Temporary Amendment Act of 1998 (D.C. Law 12-249, April 20, 1999, law notification 46 DCR 4162).

For temporary (225 day) amendment of section, see § 3(a), (b) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Temporary Amendment Act of 1999 (D.C. Law 13-88, April 12, 2000, law notification 47 DCR 2839).

For temporary (225 day) amendment of section, see § 3(a) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Temporary Amendment Act of 2000 (D.C. Law 13-221, April 3, 2001, law notification 48 DCR 3463).

For temporary (225 day) amendment of section, see § 3(a) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Temporary Amendment Act of 2001 (D.C. Law 14-64, February 27, 2002, law notification 49 DCR 2274).

For temporary (225 day) amendment of section, see § 3(a) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Temporary Amendment Act of 2002 (D.C. Law 14-241, March 25, 2003, law notification 50 DCR 2754).

For temporary (225 day) amendment of section, see § 3(a) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Temporary Amendment Act of 2003 (D.C. Law 15-98, March 10, 2004, law notification 51 DCR 3618).

For temporary (225 day) amendment of section, see § 3(a) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Temporary Amendment Act of 2004 (D.C. Law 15-245, March 17, 2005, law notification 52 DCR 4121).

Temporary Addition of Section. — For temporary (225 day) addition, see § 3(b) of Mentally Retarded Citizens Substitute Consent for Health Care Decisions and Emergency Care Definition Temporary Amendment Act of 1998 (D.C. Law 12-249, April 20, 1999, law notification 46 DCR 4162).

For temporary (225 day) addition, see § 3(b) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Temporary Amendment Act of 2000 (D.C. Law 13-221, April 3, 2001, law notification 48 DCR 3463).

For temporary (225 day) addition, see § 3(b) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Temporary Amendment Act of 2001 (D.C. Law 14-64, February 27, 2002, law notification 49 DCR 2274).

For temporary (225 day) addition, see § 3(b) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Temporary Amendment Act of 2002 (D.C. Law 14-

241, March 25, 2003, law notification 50 DCR 2754).

For temporary (225 day) addition, see § 3(b) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Temporary Amendment Act of 2003 (D.C. Law 15-98, March 10, 2004, law notification 51 DCR 3618).

For temporary (225 day) addition, see § 3(b) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Temporary Amendment Act of 2004 (D.C. Law 15-245, March 17, 2005, law notification 52 DCR 4121).

Temporary Repeal of Section For temporary (225 day) repeal of section, see § 4(d) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Temporary Amendment Act of 2005 (D.C. Law 16-46, February 9, 2006, law notification 53 DCR 1454).

For temporary (225 day) repeal of section, see § 4(e) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Temporary Amendment Act of 2006 (D.C. Law 16-194, March 2, 2007, law notification 54 DCR 2492).

For temporary (225 day) repeal of section, see § 4(e) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Temporary Amendment Act of 2007 (D.C. Law 17-100, February 2, 2008, law notification 55 DCR 3407).

Emergency legislation. — For temporary amendment of section, see § 505(r) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

For temporary amendment of section, see § 402(f) of the Omnibus Budget Support Emergency Act of 1995 (D.C. Act 11-44, April 28, 1995, 42 DCR 2217) and § 506(r) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

For temporary amendment of section, see § 402(g) of the Omnibus Budget Support Emergency Act of 1995 (D.C. Act 11-44, April 28, 1995, 42 DCR 2217) and § 506(t) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

For temporary amendment of section, see § 506(s) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

For temporary amendment of section, see § 3(a) of the Mentally Retarded Citizens Substituted Consent for Health Care Decisions Emergency Amendment Act of 1998 (D.C. Act 12-554, December 30, 1998, 45 DCR 566).

For temporary addition of § 6-1967.1, see § 3(b) of the Mentally Retarded Citizens Sub-

stituted Consent for Health Care Decisions Emergency Amendment Act of 1998 (D.C. Act 12-554, December 30, 1998, 45 DCR 566).

For temporary (90-day) amendment of section, see § 3(a) of the Mentally Retarded Citizens Substituted Consent for Health Care Decisions Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-56, April 16, 1999, 46 DCR 3858).

For temporary (90-day) amendment of section, see § 3(a) of the Citizens with Mental Retardation Substituted Consent for Health Care Decisions Emergency Amendment Act of 1999 (D.C. Act 13-202, December 1, 1999, 47 DCR 134).

For temporary (90-day) addition of § 6-1967.1, see § 3(b) of the Citizens with Mental Retardation Substituted Consent for Health Care Decisions Emergency Amendment Act of 1999 (D.C. Act 13-202, December 1, 1999, 47 DCR 134).

For temporary (90-day) amendment of section, see § 3(a) of the Citizens with Mental Retardation Substituted Consent for Health Care Decisions Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-285, March 7, 2000, 47 DCR 2033).

For temporary (90-day) addition of § 6-1967.1, see § 3(b) of the Citizens with Mental Retardation Substituted Consent for Health Care Decisions Congressional Review Emergency Amendment Act of 2000 (D.C. Act 13-285, March 7, 2000, 47 DCR 203).

For temporary (90 day) amendment of section, see § 3(a) of the Citizens with Mental Retardation Substituted Consent for Health Care Decisions Emergency Amendment Act of 2000 (D.C. Act 13-455, November 7, 2000, 47 DCR 9415).

For temporary (90 day) addition of § 7-1305.07a, see § 3(b) of the Citizens with Mental Retardation Substituted Consent for Health Care Decisions Emergency Amendment Act of 2000 (D.C. Act 13-455, November 7, 2000, 47 DCR 9415).

For temporary (90 day) amendment of section, see § 3(a) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-3, February 13, 2001, 48 DCR 2251).

For temporary (90 day) addition of section § 7-1305.07a, see § 3(b) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-3, February 13, 2001, 48 DCR 2251).

For temporary (90 day) amendment of section, see § 3(a) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Emergency Amendment Act of 2001 (D.C. Act 14-143, October 23, 2001, 48 DCR 9944).

For temporary (90 day) addition of section § 7-1305.07a, see § 3(b) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Emergency Amendment Act of 2001 (D.C. Act 14-143, October 23, 2001, 48 DCR 9944).

For temporary (90 day) amendment of section, see § 3(a) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-246, January 28, 2002, 49 DCR 1040).

For temporary (90 day) addition of § 7-1305.07a, see § 3(b) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-246, January 28, 2002, 49 DCR 1040).

For temporary (90 day) amendment of section, see § 3(a) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Emergency Amendment Act of 2002 (D.C. Act 14-514, October 23, 2002, 49 DCR 10480).

For temporary (90 day) addition of § 7-1305.07a, see § 3(b) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Emergency Amendment Act of 2002 (D.C. Act 14-514, October 23, 2002, 49 DCR 10480).

For temporary (90 day) amendment of section, see § 3(a) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Second Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-602, January 7, 2003, 50 DCR 684).

For temporary (90 day) addition of § 7-1305.07a, see § 3(b) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Second Congressional Review Emergency Amendment Act of 2002 (D.C. Act 14-602, January 7, 2003, 50 DCR 684).

For temporary (90 day) amendment of section, see § 3(a) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Emergency Amendment Act of 2003 (D.C. Act 15-234, November 25, 2003, 50 DCR 10734).

For temporary (90 day) addition of section, see § 3(b) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Emergency Amendment Act of 2003 (D.C. Act 15-234, November 25, 2003, 50 DCR 10734).

For temporary (90 day) amendment of section, see § 3(a) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-359, February 19, 2004, 51 DCR 2578).

For temporary (90 day) addition of section, see § 3(b) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Congressional Review Emergency Amendment

Act of 2004 (D.C. Act 15-359, February 19, 2004, 51 DCR 2578).

For temporary (90 day) amendment of section, see § 3(a) of Citizens with Mental Retardation Substituted for Health Care Decisions Emergency Amendment Act of 2004 (D.C. Act 15-558, October 26, 2004, 51 DCR 10375).

For temporary (90 day) addition of section, see § 3(b) of Citizens with Mental Retardation Substituted for Health Care Decisions Emergency Amendment Act of 2004 (D.C. Act 15-558, October 26, 2004, 51 DCR 10375).

For temporary (90 day) amendment of section, see § 3(a) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-6, January 19, 2005, 52 DCR 2683).

For temporary (90 day) addition of section, see § 3(b) of Citizens with Mental Retardation Substituted Consent for Health Care Decisions Congressional Review Emergency Amendment Act of 2005 (D.C. Act 16-6, January 19, 2005, 52 DCR 2683).

For temporary (90 day) repeal of section, see § 4(d) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Emergency Amendment Act of 2005 (D.C. Act 16-190, October 28, 2005, 52 DCR 10021).

For temporary (90 day) repeal of section, see § 4(d) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-262, January 26, 2006, 53 DCR 795).

For temporary (90 day) repeal of section, see § 4(e) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Amendment Act of 2006 (D.C. Act 16-480, September 25, 2006, 53 DCR 7940).

For temporary (90 day) repeal of section, see § 4(e) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-566, December 19, 2006, 53 DCR 10272).

For temporary (90 day) repeal, see § 4(e) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2007 (D.C. Act 17-161, October 18, 2007, 54 DCR 10932).

For temporary (90 day) repeal, see § 4(e) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Act of 2007 (D.C. Act 17-245, January 23, 2008, 55 DCR 1230).

For temporary (90 day) repeal, see § 5(e) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2008 (D.C. Act 17-492, August 4, 2008, 55 DCR 9167).

Legislative history of Law 2-137. — For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 17-249. — For Law 17-249, see notes following § 7-1203.03.

§ 7-1305.07a. Health-care decisions policy, annual plan, and quarterly reports.

(a) It shall be the policy of the District government to ensure that all persons who become incapable of making or communicating health-care decisions for themselves have available health-care decision-makers. In addition, it shall be the policy of DDS to ensure that every DDS customer has the opportunity to execute a durable power of attorney pursuant to § 21-2205, and has one or more individuals identified as reasonably available, mentally capable, and willing to provide substituted consent pursuant to § 21-2210, if the customer were to become certified as incapacitated to make a health-care decision in accordance with § 21-2204.

(b) The DDS Administrator shall issue by November 1 of each year an annual plan describing how DDS will comply with subsection (a) of this section during the current fiscal year. The plan shall include data from the prior fiscal year for assessing the current and potential health-care decision-making needs of all DDS customers. The plan shall include, at a minimum:

(1) Have a general guardian, a limited guardian, a health-care guardian, or an emergency guardian as of the end of the prior fiscal year;

(A) Have a general guardian, a limited guardian, a health-care guardian, or an emergency guardian as of the end of the prior fiscal year;

(B) At any time during the prior fiscal year, had an emergency guardian authorized to make health-care decisions or a health-care guardian;

(C) Have executed a durable power of attorney in accordance with § 21-2205;

(D) Have been offered an opportunity to execute a durable power of attorney pursuant to § 21-2205 and declined;

(E) Have an individual identified as reasonably available, mentally capable, and willing to provide substituted consent pursuant to § 21-2210; or

(F) Lack any available substitute health-care decision-maker;

(2) Aggregate statistics describing the numbers of customers taking psychotropic medications as of the end of the previous fiscal year, and an assessment of the degree to which health-care decision-making support for the prescription of psychotropic medication may be required for these customers;

(3) Aggregate statistics describing the requests for consent reviewed during the prior fiscal year by the independent psychotropic medication panel authorized in § 7-1305.06b, analyzing outcomes, monthly and yearly trends, and requests for review by the DDS Human Rights Committee;

(4) Aggregate statistics describing for the prior fiscal year:

(A) The number of substitute decisions which required intervention by DDS to identify an individual to provide substituted consent pursuant to § 21-2210;

(B) The nature of the health-care needs and medical treatments; and

(C) The average time elapsed between a request for a substituted decision and the provision of substituted consent; and

(5) An analysis of the statistics described in this subsection, identification of yearly and multiyear trends, and a plan for remedial measures to be taken when the statistics identify process or service deficiencies.

(c) The DDS Administrator shall produce a quarterly report on all substituted consent activities pursuant to subsection (a) of this section until October 2010. Quarterly reports shall be complete by the 15th day of October, January, April, and July and shall include:

(1) Statistics describing:

(A) The number of substitute decisions during the prior quarter which required intervention by DDS to identify an individual to provide substituted consent pursuant to § 21-2210;

(B) The nature of the health-care needs and medical treatments for each substituted decision;

(C) The time elapsed between each request for a substituted decision and the provision of substituted consent; and

(D) If the process for identifying an individual to provide substituted consent pursuant to § 21-2210 is not complete, a summary of the specific barriers currently identified and the specific action needed; and

(2) An analysis of the statistics described in this subsection, and a plan for remedial measures to be taken, when the statistics identify process delays.

(d)(1) The DDS Administrator shall submit the annual plan described in

subsection (b) of this section and the quarterly report described in subsection (c) of this section to:

(A) The Committee of the Council under whose purview DDS falls;

(B) The Mayor; and

(C) The designated state protection and advocacy agency for the District of Columbia established pursuant to the Protection and Advocacy for Mentally Ill Individuals Act of 1986, approved May 23, 1986 (100 Stat. 478; 42 U.S.C. § 10801 et seq.), and section 509 of the Rehabilitation Act of 1973, approved October 29, 1992 (106 Stat. 4430; 29 U.S.C. § 794e).

(2) The DDS Administrator shall make copies of the annual plan and quarterly reports described in this section available to members of the public upon request.

(e) Nothing in this section shall be construed as requiring any person to execute a durable power of attorney for health care.

(Mar. 3, 1979, D.C. Law 2-137, § 507a, as added Oct. 22, 2008, D.C. Law 17-249, § 5(f), 55 DCR 9206.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 4(e) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Temporary Amendment Act of 2005 (D.C. Law 16-46, February 9, 2006, law notification 53 DCR 1454).

For temporary (225 day) addition, see § 4(f) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Temporary Amendment Act of 2006 (D.C. Law 16-194, March 2, 2007, law notification 54 DCR 2492).

For temporary (225 day) addition, see § 4(f) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Temporary Amendment Act of 2007 (D.C. Law 17-100, February 2, 2008, law notification 55 DCR 3407).

Emergency legislation. — For temporary (90 day) addition, see § 4(e) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Emergency Amendment Act of 2005 (D.C. Act 16-190, October 28, 2005, 52 DCR 10021).

For temporary (90 day) addition, see § 4(e) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Congressional Review Emergency Amendment Act

of 2006 (D.C. Act 16-262, January 26, 2006, 53 DCR 795).

For temporary (90 day) addition, see § 4(f) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Amendment Act of 2006 (D.C. Act 16-480, September 25, 2006, 53 DCR 7940).

For temporary (90 day) addition, see § 4(f) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-566, December 19, 2006, 53 DCR 10272).

For temporary (90 day) addition, see § 4(f) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2007 (D.C. Act 17-161, October 18, 2007, 54 DCR 10932).

For temporary (90 day) addition, see § 4(f) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Act of 2007 (D.C. Act 17-245, January 23, 2008, 55 DCR 1230).

For temporary (90 day) addition, see § 5(f) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2008 (D.C. Act 17-492, August 4, 2008, 55 DCR 9167).

Legislative history of Law 17-249. — For Law 17-249, see notes following § 7-1203.03.

§ 7-1305.08. Sterilization.

No customer of a facility shall be sterilized by any employee of a facility or by any other person acting at the direction of, or under the authorization of, the Director or any other employee of a facility.

(Mar. 3, 1979, D.C. Law 2-137, § 508, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(s), 42 DCR 3684.)

Prior Codifications. — 1981 Ed., § 6-1968. 1973 Ed., § 6-1688.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 505(s) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

Emergency legislation. — For temporary amendment of section, see § 505(s) of the Multiyear Budget Spending Reduction and Support

Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

Legislative history of Law 2-137. — For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 7-1301.02.

§ 7-1305.09. Experimental research.

Customers shall have a right not to be subjected to experimental research without the express and informed consent of the customer, or if the customer cannot give informed consent, of the customer's parent or guardian. Such proposed research shall first have been reviewed and approved by the Department on Disability Services before such consent shall be sought. Prior to such approval, the Department shall determine that such research complies with the principles of the statement on the use of human subjects for research of the American Association on Mental Deficiency and with the principles for research involving human subjects required by the United States Department of Health and Human Services for projects supported by that agency.

(Mar. 3, 1979, D.C. Law 2-137, § 509, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(t), 42 DCR 3684; Mar. 14, 2007, D.C. Law 16-264, § 301(l), 54 DCR 818.)

Prior Codifications. — 1981 Ed., § 6-1969. 1973 Ed., § 6-1689.

Effect of amendments. — D.C. Law 16-264 substituted "Department on Disability Services" for "Department of Human Services".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 505(t) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

Emergency legislation. — For temporary amendment of section, see § 505(t) of the Multiyear Budget Spending Reduction and Support Emergency Act of 1994 (D.C. Act 10-389, December 29, 1994, 42 DCR 197).

For temporary (90 day) amendment of section, see § 301(l) of Developmental Disabilities Services Management Reform Emergency Amendment Act of 2006 (D.C. Act 16-672, December 28, 2006, 54 DCR 1155).

Legislative history of Law 2-137. — For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 16-264. — For Law 16-264, see notes following § 7-1301.03.

§ 7-1305.10. Mistreatment, neglect or abuse prohibited; use of restraints; seclusion; "time-out" procedures.

(a) Mistreatment, neglect or abuse in any form of any customer shall be prohibited. The routine use of all forms of restraint shall be eliminated. Physical or chemical restraint shall be employed only when absolutely necessary to prevent a customer from seriously injuring himself or herself, or others. Restraint shall not be employed as a punishment, for the convenience of staff or as a substitute for programs. In any event, restraints may only be applied

if alternative techniques have been attempted and failed (such failure to be documented in the customer's record) and only if such restraints impose the least possible restriction consistent with their purposes. Each facility shall have a written policy defining: *

- (1) The use of restraints;
- (2) The professionals who may authorize such use; and
- (3) The mechanism for monitoring and controlling such use.

(b) Only professionals designated by the Director may order the use of restraints. Such orders shall be in writing and shall not be in force for over 12 hours. A customer placed in restraint shall be checked at least every 30 minutes by staff trained in the use of restraints and a written record of such checks shall be kept.

(c) Mechanical restraints shall be designed for minimum discomfort and used so as not to cause physical injury to the customer. Opportunity for motion and exercise shall be provided for a period of not less than 10 minutes during each 2 hours in which restraint is employed.

(d) Seclusion, defined as a placement of a customer alone in a locked room, shall not be employed. Legitimate "time-out" procedures may be utilized under close and direct professional supervision as a technique in behavior-shaping programs. Each facility shall have a written policy regarding "time-out" procedures.

(e) Alleged instances of mistreatment, neglect or abuse of any customer shall be reported immediately to the Director and the Director shall inform the customer's counsel, parent or guardian who petitioned for the commitment, and the customer's mental retardation advocate of any such instances. There shall be a written report that the allegation has been thoroughly and promptly investigated (with the findings stated therein). Employees of facilities who report such instances of mistreatment, neglect, or abuse shall not be subjected to adverse action by the facility because of the report.

(f) A customer's counsel, parent or guardian who petitioned for commitment and a customer's mental retardation advocate shall be notified in writing whenever restraints are used and whenever an instance of mistreatment, neglect or abuse occurs.

(Mar. 3, 1979, D.C. Law 2-137, § 510, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(u), 42 DCR 3684.)

Section references. — This section is referred to in § 7-1305.12.

Prior Codifications. — 1981 Ed., § 6-1970. 1973 Ed., § 6-1690.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 505(u) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

Emergency legislation. — For temporary amendment of section, see § 402(h) of the Omnibus Budget Support Emergency Act of 1995

(D.C. Act 11-44, April 28, 1995, 42 DCR 2217) and § 506(u) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative history of Law 2-137. — For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 7-1301.02.

CASE NOTES

ANALYSIS

Causes of action.
Physical or chemical restraints.

Causes of action.

Provision of District of Columbia Code making it unlawful to mistreat, neglect or abuse mentally retarded wards of the District and requiring that alleged instances of abuse be reported to the patient's family and advocate, did not create an independent cause of action,

and thus dismissal of action brought under this provision by advocate for a developmentally disabled adult was required. *Karahmetoglu v. Res-Care, Inc.*, 480 F.Supp.2d 183, 2007 U.S. Dist. LEXIS 22299 (2007).

Physical or chemical restraints.

When physical or chemical restraint is used it must only be as a last resort, never as a substitute for a training program. *Maza v. District of Columbia*, 110 WLR 2229 (Super. Ct. 1982).

§ 7-1305.11. Performance of labor.

(a) No customer shall be compelled to perform labor which involves the operation, support, or maintenance of the facility or for which the facility is under contract with an outside organization. Privileges or release from the facility shall not be conditional upon the performance of such labor. The Mayor shall promulgate rules and regulations governing compensation of customers who volunteer to perform such labor, which rules and regulations shall be consistent with United States Department of Labor regulations governing employment of patient workers in hospitals and institutions at subminimum wages.

(b) A customer may be required to perform habilitative tasks which do not involve the operation, support or maintenance of the facility if those tasks are an integrated part of the customer's habilitation plan and supervised by a qualified mental retardation professional designated by the Director.

(c) A customer may be required to perform tasks of a housekeeping nature for his or her own person only.

(Mar. 3, 1979, D.C. Law 2-137, § 511, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(v), 42 DCR 3684.)

Prior Codifications. — 1981 Ed., § 6-1971. 1973 Ed., § 6-1691.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 505(v) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

Emergency legislation. — For temporary amendment of section, see § 402(i) of the Omnibus Budget Support Emergency Act of 1995 (D.C. Act 11-44, April 28, 1995, 42 DCR 2217)

and § 506(v) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative history of Law 2-137. — For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 7-1301.02.

CASE NOTES

Work therapy.

Where work is performed by patients as part of their therapy and habilitation, and they receive payment for their work, it is not im-

proper to collect from them money so earned and saved as partial reimbursement for costs of their maintenance at the institution. In re W.M., 112 WLR 369 (Super. Ct. 1984).

§ 7-1305.12. Maintenance of records; information considered privileged and confidential; access; contents.

(a) Complete records for each customer shall be maintained and shall be readily available to professional persons and to the staff workers who are directly involved with the particular customer and to the Department on Disability Services without divulging the identity of the customer. All information contained in a customer's records shall be considered privileged and confidential. The customer's parent or guardian who petitioned for the commitment, the customer's counsel, the customer's mental retardation advocate and any person properly authorized in writing by the customer, if such customer is capable of giving such authorization, shall be permitted access to the customer's records. These records shall include:

- (1) Identification data, including the customer's legal status;
- (2) The customer's history, including but not limited to:
 - (A) Family data, educational background and employment record;
 - (B) Prior medical history, both physical and mental, including prior institutionalization;
- (3) The customer's grievances, if any;
- (4) An inventory of the customer's life skills;
- (5) A record of each physical examination which describes the results of the examination;
- (6) A copy of the individual habilitation plan; and any modifications thereto and an appropriate summary which will guide and assist the professional and staff employees in implementing the customer's program;
- (7) The findings made in periodic reviews of the habilitation plan which findings shall include an analysis of the successes and failures of the habilitation program and shall direct whatever modifications are necessary;
- (8) A medication history and status;
- (9) A summary of each significant contact by a professional person with a customer;
- (10) A summary of the customer's response to his or her program, prepared and recorded at least monthly, by the professional person designated pursuant to § 7-1305.04(c) to supervise the customer's habilitation;
- (11) A monthly summary of the extent and nature of the customer's work activities and the effect of such activity upon the customer's progress along the habilitation plan;
- (12) A signed order by a professional person, as set forth in § 7-1305.10(b), for any physical restraints;
- (13) A description of any extraordinary incident or accident in the facility involving the customer, to be entered by a staff member noting personal knowledge of the incident or accident or other source of information, including any reports of investigations of customer's mistreatment;
- (14) A summary of family visits and contacts;
- (15) A summary of attendance and leaves from the facility; and
- (16) A record of any seizures, illnesses, treatments thereof, and immunizations.

(b) Notwithstanding subsection (a) of this section, information contained in a customer's record may be used or disclosed for the purposes of and in accordance with Chapter 2A of this title [§ 7-251 et seq.].

(Mar. 3, 1979, D.C. Law 2-137, § 512, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(w), 42 DCR 3684; Mar. 14, 2007, D.C. Law 16-264, § 301(m), 54 DCR 818; Dec. 4, 2010, D.C. Law 18-273, § 205, 57 DCR 7171.)

Prior Codifications. — 1981 Ed., § 6-1972. 1973 Ed., § 6-1692.

Effect of amendments. — D.C. Law 16-264, in the lead-in text, substituted "Department on Disability Services" for "Department of Human Services".

D.C. Law 18-273 designated the existing text as subsec. (a); and added subsec. (b).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 505(w) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

For temporary (225 day) amendment of section, see § 2 of Disclosure of Mental Retardation and Developmental Disabilities Fatality Review Committee and Mental Retardation and Developmental Disabilities Incident Management and Investigations Unit Information and Records Temporary Amendment Act of 2006 (D.C. Law 16-143, July 25, 2006, law notification 53 DCR 6686).

Emergency legislation. — For temporary amendment of section, see § 402(j) of the Omnibus Budget Support Emergency Act of 1995 (D.C. Act 11-44, April 28, 1995, 42 DCR 2217) and § 506(w) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

For temporary (90 day) amendment of section, see § 2 of Disclosure of the Mental Retardation and Developmental Disabilities Fatality

Review Committee and Mental Retardation and Developmental Disabilities Incident Management and Investigations Unit Information and Records Emergency Amendment Act of 2006 (D.C. Act 16-363, April 26, 2006, 53 DCR 3628).

For temporary (90 day) amendment of section, see § 301(m) of Developmental Disabilities Services Management Reform Emergency Amendment Act of 2006 (D.C. Act 16-672, December 28, 2006, 54 DCR 1155).

For temporary (90 day) amendment of section, see § 205 of Data-Sharing and Information Coordination Emergency Amendment Act of 2010 (D.C. Act 18-530, August 6, 2010, 57 DCR 8099).

For temporary (90 day) amendment of section, see § 205 of Data-Sharing and Information Coordination Congressional Review Emergency Amendment Act of 2010 (D.C. Act 18-582, October 20, 2010, 57 DCR 10118).

Legislative history of Law 2-137. — For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 16-264. — For Law 16-264, see notes following § 7-1301.03.

Legislative history of Law 18-273. — For Law 18-273, see notes following § 7-131.

§ 7-1305.13. Initiation of action to compel rights; civil remedy; sovereign immunity barred; defense to action; payment of expenses.

(a) Any interested party shall have the right to initiate an action in the Court to compel the rights afforded persons with mental retardation under this chapter.

(b) Any customer shall have the right to a civil remedy in an amount not less than \$25 per day from the Director or the District of Columbia, separately or jointly, for each day in which said customer at a facility is not provided a program adequate for habilitation and normalization pursuant to the customer's individual habilitation plan, unless the District is unable to pay the cost of recommended services because available funds appropriated for the purposes of this chapter are insufficient to pay the costs.

(c) Sovereign immunity shall not bar an action under this section.

(d) The good faith belief that an habilitation program was professionally indicated shall be a defense to an action under subsection (b) of this section, despite the program's apparent ineffectiveness. In such circumstances, the habilitation program shall be modified to one appropriate for the customer within 5 days of a Court's decision that the program is inappropriate.

(e) Reasonable attorneys' fees and Court costs shall be available for actions brought under this section.

(Mar. 3, 1979, D.C. Law 2-137, § 513, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(x), 42 DCR 3684; Apr. 24, 2007, D.C. Law 16-305, § 26(p), 53 DCR 6198.)

Prior Codifications. — 1981 Ed., § 6-1973. 1973 Ed., § 6-1693.

Effect of amendments. — D.C. Law 16-305, in subsec. (a), substituted "persons with mental retardation" for "mentally retarded persons".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 505(x) of Multiyear Budget Spending Reduction and Support Temporary Act of 1995 (D.C. Law 10-253, March 23, 1995, law notification 42 DCR 1652).

For temporary (225 day) amendment of section, see § 4(h) of Human Services Spending Reduction Temporary Amendment Act of 1995 (D.C. Law 11-29, July 25, 1995, law notification 42 DCR 4002).

Emergency legislation. — For temporary amendment of section, see § 4(h) of the Human Services Spending Reduction Emergency Amendment Act of 1995 (D.C. Act 11-35, April 11, 1995, 42 DCR 1834) and § 4(h) of the

Human Services Spending Reduction Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-104, July 21, 1995, 42 DCR 4014).

For temporary amendment of section, see § 402(k) of the Omnibus Budget Support Emergency Act of 1995 (D.C. Act 11-44, April 28, 1995, 42 DCR 2217) and § 506(x) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27,

Legislative history of Law 2-137. — For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 7-531.01.

CASE NOTES

ANALYSIS

Construction and application.
Habitation plan.
Remedies.

Construction and application.

Plaintiffs, mentally disabled adult women who had received habilitation services from District of Columbia, were entitled to leave to amend their complaint to allege violations of District's Mentally Retarded Citizens Constitutional Rights and Dignity Act and its guarantee of rights to receive habilitation services suited to their needs and humanely provided with full respect for person's dignity and personal integrity in relation to District's authorization of abortions performed on plaintiffs, where, if plaintiffs succeeded on their § 1983 claim that consent was constitutionally inadequate under due process, they may have been able to make out claims for violation of Act's guarantees. Doe

v. District of Columbia, 815 F.Supp.2d 208, 2011 U.S. Dist. LEXIS 113387 (2011).

Action created by this section is analogous to common law tort action. *Stone v. District of Columbia*, 110 WLR 2213 (Super. Ct. 1982).

Habitation plan.

The rights to a habilitation program suited to their needs for all mentally retarded residents is guaranteed by § 6-1961, and when denied, triggers the remedy in subsection (b) of this section. *Maza v. District of Columbia*, 110 WLR 2229 (Super. Ct. 1982).

Remedies.

Separate civil action had to be filed to redress denial of a mentally ill person's right to an individually structured habitation program. In re M.J., 135 WLR 1873 (Super. Ct. 2007).

This section does not provide for punitive damages or fine. *Maza v. District of Columbia*, 110 WLR 2229 (Super. Ct. 1982).

The District should not escape liability for damages provided under this section by the expedient of failing to appropriate funds to implement this Act, the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978. *Maza v. District of Columbia*, 110 WLR 2229 (Super. Ct. 1982).

Since the whole thrust of this Act, the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978 is not to treat mentally retarded persons as less than full citizens, a court may assess damages just as it would for a

normal person who was kept in a locked ward each day, treated as a pet, not given proper care for her documented needs (both physical and mental), but was fed, clothed, and sheltered. *Maza v. District of Columbia*, 110 WLR 2229 (Super. Ct. 1982).

Subsection (b) of this section creates legal rights and remedies of the sort traditionally enforced in an action at law and therefore a plaintiff is entitled to a jury trial upon proper demand. *Maza v. District of Columbia*, 110 WLR 2229 (Super. Ct. 1982).

§ 7-1305.14. Deprivation of civil rights; public or private employment; retention of rights; liability; immunity; exceptions.

(a) No person shall be deprived of any civil right, or public or private employment, solely by reason of his or her having received services, voluntarily or involuntarily, for mental retardation.

(b) Any person who has been admitted or committed to a facility under the provisions of this chapter retains all rights not specifically denied him or her under this chapter, including rights of habeas corpus.

(c) Any person who violates or abuses any rights or privileges protected by this chapter shall be liable for damages as determined by law, for Court costs and for reasonable attorneys' fees. Any person who acts in good faith compliance with the provisions of this chapter shall be immune from civil or criminal liability for actions in connection with evaluation, admission, commitment, habilitative programming, education or discharge of a resident. However, this section shall not relieve any person from liability for acts of negligence, misfeasance, nonfeasance, or malfeasance.

(Mar. 3, 1979, D.C. Law 2-137, § 514, 25 DCR 5094.)

Prior Codifications. — 1981 Ed., § 6-1974. 1973 Ed., § 6-1694.

Legislative history of Law 2-137. — For

legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

§ 7-1305.15. Coordination of services for dually diagnosed individuals.

If an individual is committed by the Court to DDS pursuant to this chapter or committed by the Court to the Department of Mental Health pursuant to subchapter IV of Chapter 5 of Title 21, or if an individual is temporarily placed with DDS pursuant to § 7-1303.12a during the pendency of commitment proceedings, and DDS or the Department of Mental Health has reason to believe that the committed individual or the individual temporarily placed with DDS pursuant to § 7-1303.12a is dually diagnosed as having both mental illness and mental retardation, DDS and the Department of Mental Health shall collaborate in assessing the individual and shall jointly provide appropriate supports and services for the individual.

(Mar. 3, 1979, D.C. Law 2-137, § 515, as added Oct. 17, 2002, D.C. Law 14-199, § 2(r), 49 DCR 7647; Mar. 14, 2007, D.C. Law 16-264, § 301(n), 54 DCR 818.)

Effect of amendments. — D.C. Law 16-264 substituted “DDS” for “MRDDA”.

Emergency legislation. — For temporary (90 day) addition of § 7-1305.15, see § 2(p) of Civil Commitment of Citizens with Mental Retardation Emergency Amendment Act of 2002 (D.C. Act 14-383, June 12, 2002, 49 DCR 5701).

For temporary (90 day) addition of § 7-1305.15, see § 2(r) of Civil Commitment of Citizens with Mental Retardation Legislative Review Emergency Amendment Act of 2002 (D.C. Act 14-454, July 23, 2002, 49 DCR 8096).

For temporary (90 day) amendment of section, see § 301(n) of Developmental Disabilities Services Management Reform Emergency Amendment Act of 2006 (D.C. Act 16-672, December 28, 2006, 54 DCR 1155).

Legislative history of Law 14-199. — For Law 14-199, see notes following § 7-1301.03.

Legislative history of Law 16-264. — For Law 16-264, see notes following § 7-1301.03.

Subchapter VI. Miscellaneous Provisions; Effective Date.

§ 7-1306.01. Increased financial responsibility. [Repealed].

Repealed.

(1973 Ed., § 6-1695; Mar. 3, 1979, D.C. Law 2-137, § 601, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(y), 42 DCR 3684.)

Prior Codifications. — 1981 Ed., § 6-1981. 1973 Ed., § 6-1695.

Temporary Repeal of Section For temporary (225 day) repeal of section, see § 4(i) of Human Services Spending Reduction Temporary Amendment Act of 1995 (D.C. Law 11-29, July 25, 1995, law notification 42 DCR 4002).

Emergency legislation. — For temporary repeal of section, see § 4(i) of the Human Services Spending Reduction Emergency Amendment Act of 1995 (D.C. Act 11-35, April 11, 1995, 42 DCR 1834), § 4(i) of the Human Services Spending Reduction Congressional

Recess Emergency Amendment Act of 1995 (D.C. Act 11-104, July 21, 1995, 42 DCR 4014), and § 506(y) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative history of Law 2-137. — For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 7-1301.02.

§ 7-1306.02. Severability.

Should any provision of this chapter be declared to be unconstitutional or beyond the statutory authority of the Council, the remaining provisions of this chapter shall remain in effect.

(Mar. 3, 1979, D.C. Law 2-137, § 602, 25 DCR 5094.)

Prior Codifications. — 1981 Ed., § 6-1982. 1973 Ed., § 6-1696.

Legislative history of Law 2-137. — For

legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

§ 7-1306.03. Appropriations.

There is hereby authorized to be appropriated such District funds as may be necessary and available to implement the provisions of this chapter, including

funds for the development, and the support, of community-based services for persons with mental retardation.

(Mar. 3, 1979, D.C. Law 2-137, § 603, 25 DCR 5094; Sept. 26, 1995, D.C. Law 11-52, § 506(z), 42 DCR 3684; Apr. 24, 2007, D.C. Law 16-305, § 26(q), 53 DCR 6198.)

Prior Codifications. — 1981 Ed., § 6-1983. 1973 Ed., § 6-1697.

Effect of amendments. — D.C. Law 16-305 substituted “persons with mental retardation” for “mentally retarded persons”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 4(j) of Human Services Spending Reduction Temporary Amendment Act of 1995 (D.C. Law 11-29, July 25, 1995, law notification 42 DCR 4002).

Emergency legislation. — For temporary amendment of section, see § 4(j) of the Human Services Spending Reduction Emergency Amendment Act of 1995 (D.C. Act 11-35, April 11, 1995, 42 DCR 1834) and § 4(j) of the Human Services Spending Reduction Congressio-

nal Recess Emergency Amendment Act of 1995 (D.C. Act 11-104, July 21, 1995, 42 DCR 4014).

For temporary amendment of section, see § 506(z) of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative history of Law 2-137. — For legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 7-1301.02.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 7-531.01.

§ 7-1306.03a. Rules for implementation.

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, shall issue rules to implement the provisions of this chapter.

(Mar. 3, 1979, D.C. Law 2-137, § 603a, as added Sept. 26, 1995, D.C. Law 11-52, § 506(aa), 42 DCR 3684.)

Prior Codifications. — 1981 Ed., § 6-1983.1.

Temporary Addition of Section. — For temporary (225 day) addition, see § 4(k) of Human Services Spending Reduction Temporary Amendment Act of 1995 (D.C. Law 11-29, July 25, 1995, law notification 42 DCR 4002).

Emergency legislation. — For temporary addition of section, see § 4(k) of the Human Services Spending Reduction Emergency Amendment Act of 1995 (D.C. Act 11-35, April 11, 1995, 42 DCR 1834), § 4(k) of the Human Services Spending Reduction Congressional Recess Emergency Amendment Act of 1995 (D.C. Act 11-104, July 21, 1995, 42 DCR 4014), and § 506(aa) of the Omnibus Budget Support

Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Legislative history of Law 11-52. — For legislative history of D.C. Law 11-52, see Historical and Statutory Notes following § 7-1301.02.

Delegation of Authority. — Delegation of authority pursuant to title V of D.C. Law 11-52, the “Omnibus Budget Support Act of 1995”, see Mayor’s Order 97-53, March 19, 1997 (44 DCR 2162).

Delegation of Authority under D.C. Law 2-137, Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, see Mayor’s Order 2004-49, March 30, 2004 (51 DCR 4133).

§ 7-1306.04. Authority of Board of Education unchanged.

Nothing herein shall be construed to extend or diminish the authority or responsibility of the D.C. Board of Education vested pursuant to Title 38 of the District of Columbia Official Code and applicable federal laws and regulations.

(Mar. 3, 1979, D.C. Law 2-137, § 605, 25 DCR 5094.)

Prior Codifications. — 1981 Ed., § 6-1984. legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.
1973 Ed., § 6-1698.

Legislative history of Law 2-137. — For 1301.02.

§ 7-1306.05. Effective date.

This chapter shall take effect pursuant to the provisions of § 1-206.02(c)(1). With respect to persons who are residents in facilities on the effective date of this chapter, the provisions of the chapter will take effect immediately, with the exception of the admission and commitment hearing procedures established in subchapters III and IV of this chapter. The Court shall begin hearings under subchapters III and IV of this chapter to review the commitment of such persons, and shall appoint appropriate officers to review the admission of such persons, as soon as possible, but not later than 180 days after the effective date of this chapter. All Court hearings to review the admission or commitment of persons residing in facilities on the effective date of this chapter shall be completed within 3 years of the effective date of this chapter.

(Mar. 3, 1979, D.C. Law 2-137, § 696, 25 DCR 5094.)

Prior Codifications. — 1981 Ed., § 6-1985. legislative history of D.C. Law 2-137, see Historical and Statutory Notes following § 7-1301.02.
1973 Ed. § 6-1699.

Legislative history of Law 2-137. — For 1301.02.

SUBTITLE E. HEALTH CARE SAFETY NET.

CHAPTER 14. HEALTH CARE SAFETY NET ADMINISTRATION.

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| Sec. | Sec. |
| 7-1401. Health Care Safety Net Administration establishment. | 7-1404. [Repealed]. |
| 7-1402. Transfers. | 7-1405. Authorization to contract for comprehensive health care services. |
| 7-1403. Liabilities of the Public Benefit Corporation. | 7-1405.01. Rules. |

§ 7-1401. Health Care Safety Net Administration establishment.

(a) There is established within the Department of Health Care Finance a Health Care Safety Net Administration to administer and monitor compliance with any contract that the Mayor makes, pursuant to § 7-1405, or that the District of Columbia Financial Responsibility Management Assistance Authority makes, with a health care entity to provide any of the health care functions provided by the Public Benefit Corporation pursuant to Chapter 11 of Title 44 and to perform such other functions as are set forth herein.

(b) The Health Care Safety Net Administration shall be responsible for all transition activities that result from contracting out the functions of the Public Benefit Corporation and that remain to be completed after abolition of the Public Benefit Corporation pursuant to § 9 of the Health Care Privatization Amendment Act of 2001, effective July 12, 2001 (D.C. Law 14-18; 48 DCR 4047), including the following:

(1) Termination and winding down of existing contracts of the Public Benefit Corporation;

(2) Completion of administrative proceedings and court litigation previously handled by the Office of the General Counsel of the Public Benefit Corporation or by private counsel retained by the Public Benefit Corporation;

(3) Coordination of court litigation involving the Public Benefit Corporation that is being handled by the Office of the Corporation Counsel;

(4) Arrangement of outstanding claims against the Public Benefit Corporation; and

(5) Arrangement for payment of lawful obligations of the Public Benefit Corporation that are assumed by the District of Columbia pursuant to § 7-1403.

(c) The Health Care Safety Net Administration shall exercise oversight of the services contracted by the Mayor pursuant to § 7-1405, or by the District of Columbia Financial Responsibility and Management Assistance Authority, to ensure that the health of the population is maintained and that the financial viability of the health care entity providing services exempted pursuant to section 8 of the Health Care Privatization Amendment Act of 2001, effective July 12, 2001 (D.C. Law 14-18; 48 DCR 4047), is addressed.

(July 12, 2001, D.C. Law 14-18, § 3, 48 DCR 4047; Sept. 24, 2010, D.C. Law 18-223, § 5072(a), 57 DCR 6242.)

Effect of amendments. — D.C. Law 18-223, in subsec. (a), substituted “Department of Health Care Finance” for “Department of Health”.

Emergency legislation. — For temporary (90 day) medical homes grant making provisions, see § 5802 of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) medical homes grant making provisions, see § 5802 of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

For temporary (90 day) enactment, see § 5002 of Fiscal Year 2007 Budget Support Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) enactment, see § 5002 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) enactment, see § 5002 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

For temporary (90 day) amendment of section, see § 5072(a) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 14-18. — Law 14-18, the “Health Care Privatization Amendment Act of 2001”, was approved April 30, 2001 by the District of Columbia Financial Responsibility and Management Assistance Authority pursuant to section 207(c) of Public Law 104-8, and assigned DCFRMA-3. The Act was transmitted to both Houses of Congress by the Authority on May 7, 2001, for its review. The Authority gave notice to the Council by letter dated August 6, 2001 that the 30-day Congressional Review Period expired on July 11, 2001. D.C. Law 14-18 became effective on July 12, 2001.

Legislative history of Law 18-223. — Law 18-223, the “Fiscal Year 2011 Budget Support Act of 2010”, was introduced in Council and assigned Bill No. 18-731, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 26, 2010, and June 15, 2010, respectively. Signed by the Mayor on July 2, 2010, it was assigned Act No. 18-462 and transmitted to both Houses of Congress for its review. D.C. Law 18-223 became effective on September 24, 2010.

Short title. — Short title of subtitle H of title V of Law 15-205: Section 5801 of D.C. Law 15-205 provided that subtitle H of title V of the act may be cited as the Medical Homes Grant Making Act of 2004.

Short title: Section 5001 of D.C. Law 16-192 provided that subtitle A of title V of the act may be cited as the “Medical Homes Grant-Making Act of 2006”.

Short title: Section 5071 of D.C. Law 18-223 provided that subtitle H of title V of the act may be cited as the “Department of Health Care Finance Conforming Amendment Act of 2010”.

Delegation of Authority. — Delegation of Authority pursuant to D.C. Law 15-205, the Fiscal Year 2005 the Budget Support Act of 2004, the Fiscal Year 2006 the Budget Support Act of 2005, and D.C. Law 16-192, the Fiscal Year 2007 the Budget Support Act of 2006, see Mayor’s Order 2007-143, June 20, 2007 (54 DCR 9598).

Editor’s notes. — Section 5802 of D.C. Law 15-205 provided: “In addition to any contract for services authorized by the Health Care Privatization Amendment Act of 2001, effective July 12, 2001 (D.C. Law 14-18; D.C. Official Code § 7-1401) (‘Act’), subject to any necessary appropriation, the legal availability of funding, and to matching revenues (cash or in-kind) equivalent to at least 50% of each fiscal year’s grant from the District of Columbia, the Office of the City Administrator may award, through a grant to the District of Columbia Primary Care Association, if the grant meets the criteria for a sole source award, from capital funds available to the Department of Health outside of the funding for any contract authorized by the Act, an amount not to exceed \$1 million during fiscal year 2005, an amount not to exceed \$7 million during fiscal year 2006, and an amount not to exceed \$7 million during fiscal year 2007, to support and stimulate the Medical Homes DC.”

Grant-making authority: Section 5002 of D.C. Law 16-192 provided:

“(a) In addition to any contract for services authorized by the Health Care Privatization Amendment Act of 2001, effective July 12, 2001 (D.C. Law 14-18; D.C. Official Code § 7-1401 et seq.) (‘Act’), subject to any necessary appropriation and the legal availability of funding, the Office of the City Administrator shall award, through a grant to the District of Columbia Primary Care Association:

“(1) If the grant meets the criteria for a sole source award, from capital funds available to the Department of Health outside of the funding for any contract authorized by the Act, an amount not to exceed \$8.2 million during fiscal year 2007, which amount is in addition to the \$7 million authorized by the Medical Homes Grant-Making Act of 2004, effective August 2, 2004 (D.C. Law 15-205; D.C. Official Code § 7-1401, note), and \$2.8 million fiscal year 2009 to support Medical Homes DC provided that:

“(A) Of the fiscal year 2007 funding, \$6 million shall be directed to the Northwest One Community Health Center project, as part of

the Mayor's New Communities Initiative; which funds shall be managed according to the general rules of Medical Homes DC, as described in the Medical Homes Grant Agreement between the District and the DC Primary Care Association; provided, that any portion of the \$6 million not used for the Northwest One Health Center shall be used for any other Medical Homes capital project.

"(B) Of the remainder of the grant, \$2.2 million in fiscal year 2007 and \$2.8 in fiscal year 2009, shall be used to develop an electronic health record system for community health centers to promote higher quality of care, improved coordination of services among providers, and more accurate reporting of health statistics to the Department of Health; provided, that of the \$2.2 million allocated for fiscal year 2007, \$200,000 shall be used to support information technology needs for District of Columbia public and charter school nurse suites.

"(2) From operating funds available to the Department of Health not including funding for any contract authorized by the Act, an amount not to exceed \$1.9 million during fiscal year 2007 to support and stimulate the Medical Homes DC's public purpose of health improvement by ensuring that all residents of the District of Columbia, especially low-income residents and indigent residents, have a medical home where a primary care provider knows each patient's health history, where each patient can be seen regardless of ability to pay, and where each patient can routinely seek non-emergency medical care in the community where the patient resides.

"(b) The grant amounts and grant authority provided for in this act are in addition to any grant amounts and authority provided by the Medical Homes Grant-Making Act of 2004 effective August 2, 2004 (D.C. Law 15-205; D.C. Official Code § 7-1401, note)."

§ 7-1402. Transfers.

(a) The functions, real and personal property, personnel, unexpended balances of appropriations, and records of the Public Benefit Corporation shall be transferred to the Department of Health.

(b) Any monies remaining in the Health and Hospitals Public Benefit Corporation Fund after July 12, 2001, shall revert to the General Fund to the credit of the Department of Health.

(c) The Department of Health shall recognize collective bargaining representatives that have been duly certified by the District of Columbia Public Employees Relations Board and shall assume and be bound by all existing collective bargaining agreements entered into by the Public Benefit Corporation.

(d) Every employee of the Public Benefit Corporation shall be transferred to the Department of Health. All employees so transferred shall be under the direction and control of the Director of the Department of Health or that director's designee or designees. Transferred employees shall retain the same rights and privileges that they had as employees of the Public Benefit Corporation before July 12, 2001, and shall not obtain any additional rights or privileges as a result of the transfer. They shall have all the duties and responsibilities that they had as employees of the Public Benefit Corporation in addition to whatever duties and responsibilities they acquire as employees of the Department of Health. Transferred employees shall constitute a separate competitive area within the Department of Health for purposes of reductions in force only pursuant to § 1-624.08, and Chapter 24 of the District of Columbia Personnel Manual. Lesser competitive areas may be established by the personnel authority for these employees. The Mayor shall be the personnel authority for all employees of the Public Benefit Corporation who are transferred to the Department of Health, except that the personnel authority for accounting, budget, and financial management personnel who

are transferred shall continue to be the Chief Financial Officer of the District of Columbia.

(July 12, 2001, D.C. Law 14-18, § 4, 48 DCR 4047.)

Legislative history of Law 14-18. — For D.C. Law 14-18, see notes following § 7-1401.

§ 7-1403. Liabilities of the Public Benefit Corporation.

All liabilities of the Public Benefit Corporation shall be assumed by the District of Columbia.

(July 12, 2001, D.C. Law 14-18, § 5, 48 DCR 4047.)

Legislative history of Law 14-18. — For D.C. Law 14-18, see notes following § 7-1401.

§ 7-1404. Health Care Safety Net Fund and Appropriations. [Repealed].

Repealed.

(July 12, 2001, D.C. Law 14-18, § 6, 48 DCR 4047; Sept. 24, 2010, D.C. Law 18-223, § 5072(b), 57 DCR 6242; Sept. 14, 2011, D.C. Law 19-21, § 9080, 58 DCR 6226.)

Emergency legislation. — For temporary (90 day) amendment of section, see § 5072(b) of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

Legislative history of Law 14-18. — For D.C. Law 14-18, see notes following § 7-1401.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 7-1401.

Legislative history of Law 19-21. — For history of Law 19-21, see notes under § 7-731.

§ 7-1405. Authorization to contract for comprehensive health care services.

(a) The Mayor is authorized to provide by contract or by other means comprehensive community-centered health care and medical services for residents of the District of Columbia.

(b) A contract entered into by the Mayor pursuant to subsection (a) of this section shall be exempt from the requirements of Unit A of Chapter 3 of Title 2, except that the contract shall be subject to § 2-301.05a.

(c) Notwithstanding any other provision of the District's health insurance laws, a health maintenance organization that has a contractual obligation to provide health care services to persons enrolled in the D.C. HealthCare Alliance ("Alliance") shall be required to provide to persons enrolled in the Alliance only those health benefits specified in its contract with the District of Columbia.

(d) A health maintenance organization or health insurer under contract to the District to deliver services to persons enrolled in the Alliance is not

required to reimburse non-participating hospitals for services provided to Alliance enrollees.

(e) A health maintenance organization or health insurer under contract to the District to deliver services to persons enrolled in the Alliance (“Contractor”), which shall include safety net clinics, shall have the option of paying the safety net clinics on a fee-for-service basis or a capitated basis. If the Contractor elects to pay on a fee-for-service basis, the Contractor shall pay the safety net clinics no less than \$95 per visit. If the Contractor elects to pay the safety net clinics on a capitated basis, the Contractor shall pay the safety net clinics on the same terms and condition as other clinics.

(July 12, 2001, D.C. Law 14-18, § 7, 48 DCR 4047; Mar. 2, 2007, D.C. Law 16-192, § 5052, 53 DCR 6899; Aug. 16, 2008, D.C. Law 17-219, § 5035, 55 DCR 7598.)

Effect of amendments. — D.C. Law 16-192 added subsecs. (c) and (d).

D.C. Law 17-219 added subsec. (e).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of Health Care Privatization Benefit and Reimbursement Exemption Temporary Amendment of Act of 2006 (D.C. Law 16-155, September 19, 2006, law notification 53 DCR 7927).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2 of Health Care Privatization Benefit and Reimbursement Exemption Emergency Amendment Act of 2006 (D.C. Act 16-374, May 19, 2006, 53 DCR 4388).

For temporary (90 day) amendment of section, see § 5052 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) amendment of section, see § 5052 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) amendment of section, see § 5052 of Fiscal Year 2007 Budget

Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

For temporary (90 day) amendment of section, see § 5112 of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) amendment of section, see § 5112 of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 14-18. — For D.C. Law 14-18, see notes following § 7-1401.

Legislative history of Law 16-192. — For Law 16-192, see notes following § 7-751.16a.

Legislative history of Law 17-219. — For Law 17-219, see notes following § 7-651.17.

Short title. — Short title: Section 5051 of D.C. Law 16-192 provided that subtitle E of title V of the act may be cited as the “Health Care Privatization Benefit Amendment Act of 2006”.

Short title: Section 5034 of D.C. Law 17-219 provided that subtitle O of title V of the act may be cited as the “Safety Net Clinics Fee Amendment Act of 2008”.

§ 7-1405.01. Rules.

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, may issue rules to implement the provisions of this chapter. The proposed rules shall be submitted to the Council for a 30-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by act within the 30-day period, the proposed rules shall be deemed disapproved.

(July 12, 2001, D.C. Law 14-18, § 7a, as added Mar. 30, 2004, D.C. Law 15-109, § 2, 51 DCR 1342.)

Temporary Addition of Section. — For temporary (225 day) addition, see § 2 of Health Care Privatization Rulemaking Temporary Amendment Act of 2003 (D.C. Law 15-54, December 9, 2003, law notification 51 DCR 1789).

Emergency legislation. — For temporary (90 day) addition, see § 2 of Health Care Privatization Rulemaking Emergency Amendment Act of 2003 (D.C. Act 15-126, July 29, 2003, 50 DCR 6831).

For temporary (90 day) addition, see § 2 of Health Care Privatization Rulemaking Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-213, November 7, 2003, 50 DCR 10009).

For temporary (90 day) addition, see § 2 of Health Care Privatization Rulemaking Congressional Review Emergency Amendment Act of 2004 (D.C. Act 15-326, January 28, 2004, 51 DCR 1593).

Legislative history of Law 15-109. — Law 15-109, the “Health Care Privatization Rulemaking Amendment Act of 2004”, was introduced in Council and assigned Bill No. 15-274, which was referred to the Committee on

Human Services. The Bill was adopted on first and second readings on December 2, 2003, and January 6, 2004, respectively. Signed by the Mayor on January 27, 2004, it was assigned Act No. 15-296 and transmitted to both Houses of Congress for its review. D.C. Law 15-109 became effective on March 30, 2004.

Delegation of Authority. — Delegation of Authority pursuant to D.C. Law 14-18, the “Health Care Privatization Amendment Act of 2001”, see Mayor’s Order 2004-127, August 2, 2004 (51 DCR 8008).

Resolutions. — Resolution 16-607, the “Health Care Safety Net Administration Rulemaking Amendments Emergency Approval Resolution of 2006”, was approved effective April 4, 2006.

Resolution 18-149, the “Eligibility Criteria Amendment for the HealthCare Alliance Program Approval Resolution of 2009”, was approved effective June 2, 2009.

Resolution 18-343, the “Residency Criteria Amendment for the HealthCare Alliance Program Approval Resolution of 2009”, was approved effective December 15, 2009.

SUBTITLE F. ANATOMICAL PARTS.

CHAPTER 15. ANATOMICAL PARTS.

Subchapter I. Prohibition of Buying and Selling of Human Body Parts

Sec.

- 7-1501.01. "Human body parts" defined; prohibited acts.
- 7-1501.02. Penalties; prosecutions.
- 7-1501.03. Rules.

Subchapter II. Anatomical Gifts

7-1521.01 to 7-1521.11. [Repealed].

Subchapter II-A. Revised Uniform Anatomical Gift Act

- 7-1531.01. Definitions.
- 7-1531.02. Applicability.
- 7-1531.03. Who may make anatomical gift before donor's death.
- 7-1531.04. Manner of making anatomical gift before donor's death.
- 7-1531.05. Amending or revoking anatomical gift before donor's death.
- 7-1531.06. Refusal to make anatomical gift; effect of refusal.
- 7-1531.07. Preclusive effect of anatomical gift, amendment, or revocation.
- 7-1531.08. Who may make anatomical gift of decedent's body or part.
- 7-1531.09. Manner of making, amending, or revoking anatomical gift of decedent's body or part.
- 7-1531.10. Persons that may receive anatomical gift; purpose of anatomical gift.
- 7-1531.11. Search and notification.
- 7-1531.12. Delivery of document of gift not required; right to examine.
- 7-1531.13. Rights and duties of procurement organization and others.
- 7-1531.14. Coordination of procurement and use.
- 7-1531.15. Sale or purchase of parts prohibited.
- 7-1531.16. Other prohibited acts.
- 7-1531.17. Immunity.
- 7-1531.18. Law governing validity; choice of law as to execution of document of gift; presumption of validity.
- 7-1531.19. Establishment of the donor registry.
- 7-1531.19a. Access to Registry information.
- 7-1531.19b. Sources of Registry information; confidentiality.
- 7-1531.19c. Department of Motor Vehicles transfer of Registry information requirements.

Sec.

- 7-1531.19d. Effect of amendment or revocation of anatomical gift upon Registry.
- 7-1531.19e. Donor status not dependent on being listed in Registry.
- 7-1531.19f. Rulemaking for Registry.
- 7-1531.20. Effect of anatomical gift on advance health-care directive.
- 7-1531.21. Cooperation between the Chief Medical Examiner and procurement organizations.
- 7-1531.22. Facilitation of anatomical gift from decedent whose body is under jurisdiction of Chief Medical Examiner.
- 7-1531.23. Uniformity of application and construction.
- 7-1531.24. Duties of hospitals and hospices.
- 7-1531.25. Organ preservation.
- 7-1531.26. Certificate requirement.
- 7-1531.27. Rules.
- 7-1531.28. Relation to Electronic Signatures in Global and National Commerce Act.

Subchapter III. Human Tissue Banks

- 7-1541.01. Statement of policy and purpose.
- 7-1541.02. Definitions.
- 7-1541.03. Licenses.
- 7-1541.04. Penalties; prosecutions.
- 7-1541.05. [Repealed].
- 7-1541.05a. Authority of organ procurement organization acting on behalf of eye bank or tissue bank.
- 7-1541.06. Exemptions from subchapter.
- 7-1541.07. Construction.
- 7-1541.08. Authority of licensed blood banks to transfer blood components within District.

Subchapter III-A. Transfer of Blood Components

- 7-1551.01. Authority of licensed blood banks to transfer blood components within District.

Subchapter III-B. Blood Donations by Minors

- 7-1551.31. Minor blood donations.
- 7-1551.32. Rules.

Subchapter IV. Organ and Tissue Donor Registry

7-1561.01 to 7-1561.06. [Repealed].

Subchapter I. Prohibition of Buying and Selling of Human Body Parts.

§ 7-1501.01. “Human body parts” defined; prohibited acts.

(a) For the purposes of this subchapter, the term “human body parts” means any portion of a living human body, including, but not limited to, organs, tissues, eyes, bones, veins, and arteries, except that the term shall not mean hair and blood.

(b) It is unlawful for any person in the District of Columbia to buy, to offer to buy, to sell, to offer to sell, or to procure through purchase any human body part for any reason, including, but not limited to, medical and specific uses, such as transplantation, implantation, infusion, or injection.

(Mar. 16, 1985, D.C. Law 5-189, § 2, 32 DCR 931; Apr. 15, 2008, D.C. Law 17-145, § 30(c), 55 DCR 2532.)

Prior Codifications. — 1981 Ed., § 6-2601.

Effect of amendments. — D.C. Law 17-145, in subsec. (a), substituted “a living human body” for “a human body”.

Legislative history of Law 5-189. — Law 5-189, the “Prohibition of the Buying and Selling of Human Body Parts Act of 1984,” was introduced in Council and assigned Bill No. 5-398, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 4, 1984, and December 18, 1984, respectively. Signed by the Mayor on January 11, 1985, it was assigned Act No. 5-254 and transmitted to both Houses of Congress for its review.

Legislative history of Law 17-145. — Law 17-145, the “Uniform Anatomical Gift Revision Act of 2008”, was introduced in Council and assigned Bill No. 17-58 which was referred to the Committee on Public Safety and Judiciary. The Bill was adopted on first and second readings on January 8, 2008, and February 5, 2008, respectively. Signed by the Mayor on February 25, 2008, it was assigned Act No. 17-311 and transmitted to both Houses of Congress for its review. D.C. Law 17-145 became effective on April 15, 2008.

§ 7-1501.02. Penalties; prosecutions.

(a) Any person violating any provision of this subchapter or any regulation made pursuant to this subchapter shall be fined not more than \$5,000, or be imprisoned for not more than 6 months, or both.

(b) Prosecution for violations of this subchapter and regulations made pursuant to this subchapter shall be brought in the name of the District of Columbia upon information by the Corporation Counsel.

(Mar. 16, 1985, D.C. Law 5-189, § 3, 32 DCR 931.)

Prior Codifications. — 1981 Ed., § 6-2602.

Legislative history of Law 5-189. — For legislative history of D.C. Law 5-189, see His-

torical and Statutory Notes following § 7-1501.01.

§ 7-1501.03. Rules.

The Mayor may issue rules to implement the provisions of this subchapter pursuant to subchapter I of Chapter 5 of Title 2.

(Mar. 16, 1985, D.C. Law 5-189, § 4, 32 DCR 931.)

Prior Codifications. — 1981 Ed., § 6-2603.

Legislative history of Law 5-189. — For legislative history of D.C. Law 5-189, see Historical and Statutory Notes following § 7-1501.01.

Delegation of Authority. — Delegation of authority pursuant to Law 5-189, see Mayor's Order 86-62, April 22, 1986.

Delegation of authority pursuant to Law 5-189, see Mayor's Order 86-62, April 22, 1986.

Subchapter II. Anatomical Gifts.

§§ 7-1521.01 to 7-1521.11 Definitions; short title; Persons eligible to execute gifts; nonacceptance by donee; Rights of donee created by gift; Persons who may become donees; Purposes for which gifts may be made; manner of executing gifts; Delivery of documents of gift; Amendment or revocation of gift; Duties of donee; Determination of time of death; Immunity; Construction; Duties of hospitals and hospices; Organ preservation; Certificate requirement; rules. [Repealed].

Repealed.

(May 26, 1970, 84 Stat. 266, Pub. L. 91-268, § 1-12; Feb. 28, 1987, D.C. Law 6-194, § 2, 34 DCR 479; Sept. 29, 1992, D.C. Law 9-157, § 2, 39 DCR 5686; May 24, 1996, D.C. Law 11-125, § 2, 43 DCR 1548; Apr. 15, 2008, D.C. Law 17-145, § 30(d), 55 DCR 2532.)

Prior Codifications. — 1981 Ed., § 2-1501 to 2-1511.

2001 Ed., § 7-1521.10a.

1973 Ed., § 2-271 to 2-277.

Legislative history of Law 6-194. — Law 6-194, the "District of Columbia Anatomical Gift Amendments Act of 1986," was introduced in Council and assigned Bill No. 6-467, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 18, 1986, and December 16, 1986, respectively. Signed by the Mayor on January 8, 1987, it was assigned Act No. 6-252 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-157. — Law 9-157, the "Tissue Transplantation Distribution Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-278, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 2, 1992, and July 7, 1992, respectively. Signed by the Mayor on July 21, 1992, it was assigned Act No. 9-251 and transmitted to both Houses of Congress for its review. D.C. Law 9-157 became effective on September 29, 1992.

Legislative history of Law 11-125. — Law 11-125, the "Anatomical Gift Amendment Act of 1996," was introduced in Council and Assigned Bill No. 11-317, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on February 6, 1996, and March 5, 1996, respectively. Signed by the mayor on March 15, 1996, it was assigned Act No. 11-232 and transmitted to both Houses of Congress for its review. D.C. Law 11-118 became effective on May 24, 1996.

Legislative history of Law 17-145. — Law 17-145, the "Uniform Anatomical Gift Revision Act of 2008," was introduced in Council and assigned Bill No. 17-58 which was referred to the Committee on Public Safety and Judiciary. The Bill was adopted on first and second readings on January 8, 2008, and February 5, 2008, respectively. Signed by the Mayor on February 25, 2008, it was assigned Act No. 17-311 and transmitted to both Houses of Congress for its review. D.C. Law 17-145 became effective on April 15, 2008.

Editor's notes. — Mayor authorized to issue rules: Section 4 of D.C. Law 9-157 provided that the Mayor shall issue rules to implement the provisions of the act.

Uniform Law: This subchapter was based upon §§ 1 to 9 of the Uniform Anatomical Gift Act (1968 Act).

Delegation of Authority. — Delegation of authority pursuant to Law 6-194, see Mayor's Order 87-145, June 19, 1987.

Delegation of Authority. — Delegation of authority pursuant to D.C. Law 9-157, the "Tissue Transplantation Distribution Amendment Act of 1992", see Mayor's Order 93-61, May 12, 1993.

Subchapter II-A. Revised Uniform Anatomical Gift Act.

§ 7-1531.01. Definitions.

For the purposes of this subchapter and, unless specifically provided otherwise, subchapter III of this chapter [§ 7-1541.01 et seq.], and §§ 43-119 and 43-125, the term:

(1) "Adult" means an individual who is at least 18 years of age.

(2) "Agent" means an individual:

(A) Authorized to make health-care decisions on the principal's behalf by a power of attorney for health care; or

(B) Expressly authorized to make an anatomical gift on the principal's behalf by any other record signed by the principal.

(3) "Anatomical gift" means a donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation, therapy, research, or education.

(4) "Decedent" means a deceased individual whose body or part is or may be the source of an anatomical gift. The term "decedent" includes a stillborn infant and, subject to restrictions imposed by law other than this subchapter, a fetus.

(5) "Disinterested witness" means a witness other than the spouse, domestic partner, child, parent, sibling, grandchild, grandparent, or guardian of the individual who makes, amends, revokes, or refuses to make an anatomical gift, or another adult who exhibited special care and concern for the individual. The term "disinterested witness" does not include a person to which an anatomical gift could pass under § 7-1531.10. An individual is not disqualified from being a disinterested witness solely because the individual is employed by a transplant hospital.

(6) "Document of gift" means a donor card or other record used to make an anatomical gift. The term "document of gift" includes a statement or symbol on a driver's license, identification card, or donor registry.

(7) "Domestic partner" shall have the same meaning as provided in § 32-701(4).

(8) "Donor" means an individual whose body or part is the subject of an anatomical gift.

(9) "Donor registry" means a database that contains records of anatomical gifts and amendments to or revocations of anatomical gifts. The term "donor registry" includes the Registry.

(10) "Driver's license" means a license or permit issued by the Department of Motor Vehicles to operate a vehicle, whether or not conditions are attached to the license or permit. The term "driver's license" includes a learner's permit.

(11) "Eye bank" means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of human eyes or portions of human eyes.

(12) "Guardian" means a person appointed by a court to make decisions regarding the support, care, education, health, or welfare of an individual. The term "guardian" does not include a guardian ad litem, unless the guardian ad litem is expressly authorized by a court to consent to a donation.

(13) "Hospice" shall have the same meaning as provided in § 44-501(a)(6).

(14) "Hospital" means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state.

(15) "Identification card" means a special identification card issued by the Department of Motor Vehicles pursuant to 18 DCMR § 112.

(16) "Know" means to have actual knowledge.

(17) "Minor" means an individual who is under 18 years of age.

(18) "Organ procurement organization" means a person designated by the Secretary of the United States Department of Health and Human Services as an organ procurement organization.

(19) "Parent" means a parent whose parental rights have not been terminated.

(20) "Part" means an organ, an eye, or tissue of a human being. The term "part" does not include the whole body.

(21) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(22) "Physician" means an individual authorized to practice medicine or osteopathy under the law of any state.

(23) "Procurement organization" means an eye bank, organ procurement organization, or tissue bank.

(24) "Prospective donor" means an individual who is dead or whose death is imminent and has been determined by a procurement organization to have a part that could be medically suitable for transplantation, therapy, research, or education. The term "prospective donor" does not include an individual who has made a refusal.

(25) "Reasonably available" means able to be contacted by a procurement organization without undue effort and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift.

(26) "Recipient" means an individual into whose body a decedent's part has been or is intended to be transplanted.

(27) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(28) "Refusal" means a record created under § 7-1531.06 that expressly states an intent to bar other persons from making an anatomical gift of an individual's body or part. The term "refusal" does not include a revocation.

(29) “Registry” means the organ and tissue donor registry for the District of Columbia established by § 7-1531.19.

(30) “Revocation” means the cancellation of an anatomical gift that was made previously. The term “revocation” does not include a refusal.

(31) “Sign” means, with the present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic symbol, sound, or process.

(32) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(33) “Technician” means an individual determined to be qualified to remove or process parts by an appropriate organization that is licensed, accredited, or regulated under federal or state law. The term “technician” includes an enucleator.

(34) “Tissue” means a portion of the human body other than an organ or an eye. The term “tissue” does not include blood unless the blood is donated for the purpose of research or education.

(35) “Tissue bank” means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of tissue.

(36) “Transplant hospital” means a hospital that furnishes organ transplants and other medical and surgical specialty services required for the care of transplant patients.

(Apr. 15, 2008, D.C. Law 17-145, § 2, 55 DCR 2532; Mar. 25, 2009, D.C. Law 17-353, 230(a), 56 DCR 1117.)

Effect of amendments. — D.C. Law 17-353 validated a previously made technical correction in par. (13).

Legislative history of Law 17-145. — Law 17-145, the “Uniform Anatomical Gift Revision Act of 2008”, was introduced in Council and assigned Bill No. 17-58 which was referred to the Committee on Public Safety and Judiciary. The Bill was adopted on first and second readings on January 8, 2008, and February 5, 2008,

respectively. Signed by the Mayor on February 25, 2008, it was assigned Act No. 17-311 and transmitted to both Houses of Congress for its review. D.C. Law 17-145 became effective on April 15, 2008.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 7-161.

Editor’s notes. — Uniform Law: This section is based upon § 2 of the Revised Uniform Anatomical Gift Act (2006).

§ 7-1531.02. Applicability.

This subchapter applies to an anatomical gift or amendment to, revocation of, or refusal to make an anatomical gift, whenever made.

(Apr. 15, 2008, D.C. Law 17-145, § 3, 55 DCR 2532.)

Legislative history of Law 17-145. — For Law 17-145, see notes following § 7-1531.01.

Editor’s notes. — Uniform Law: This sec-

tion is based upon § 3 of the Revised Uniform Anatomical Gift Act (2006).

§ 7-1531.03. Who may make anatomical gift before donor's death.

Subject to § 7-1531.07, an anatomical gift of a donor's body or part may be made during the life of the donor for the purpose of transplantation, therapy, research, or education in the manner provided in § 7-1531.04 by:

- (1) The donor, if the donor is an adult or if the donor is a minor and is:
 - (A) Emancipated; or
 - (B) Authorized under state law to apply for a driver's license because the donor is at least 16 years of age;
- (2) An agent of the donor, unless the power of attorney for health care or other record prohibits the agent from making an anatomical gift;
- (3) A parent of the donor, if the donor is an unemancipated minor; or
- (4) The donor's guardian.

(Apr. 15, 2008, D.C. Law 17-145, § 4, 55 DCR 2532.)

Legislative history of Law 17-145. — For Law 17-145, see notes following § 7-1531.01. tion is based upon § 4 of the Revised Uniform Anatomical Gift Act (2006).

Editor's notes. — Uniform Law: This sec-

§ 7-1531.04. Manner of making anatomical gift before donor's death.

(a) A donor may make an anatomical gift:

- (1) By authorizing a statement or symbol indicating that the donor has made an anatomical gift to be imprinted on the donor's driver's license or identification card;
- (2) In a will;
- (3) During a terminal illness or injury of the donor, by any form of communication addressed to at least 2 adults, at least one of whom is a disinterested witness; or
- (4) As provided in subsection (b) of this section.

(b) A donor or other person authorized to make an anatomical gift under § 7-1531.03 may make a gift by a donor card or other record signed by the donor or other person making the gift or by authorizing that a statement or symbol indicating that the donor has made an anatomical gift be included on a donor registry. If the donor or other person is physically unable to sign a record, the record may be signed by another individual at the direction of the donor or other person and shall:

(1) Be witnessed by at least 2 adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and

(2) State that it has been signed and witnessed as provided in paragraph (1) of this subsection.

(c) Revocation, suspension, expiration, or cancellation of a driver's license or identification card upon which an anatomical gift is indicated does not invalidate the gift.

(d) An anatomical gift made by will takes effect upon the donor's death

whether or not the will is probated. Invalidation of the will after the donor's death does not invalidate the gift.

(Apr. 15, 2008, D.C. Law 17-145, § 5, 55 DCR 2532.)

Legislative history of Law 17-145. — For Law 17-145, see notes following § 7-1531.01.

Editor's notes. — Uniform Law: This sec-

tion is based upon § 5 of the Revised Uniform Anatomical Gift Act (2006).

§ 7-1531.05. Amending or revoking anatomical gift before donor's death.

(a) Subject to § 7-1531.07, a donor or other person authorized to make an anatomical gift under § 7-1531.03 may amend or revoke an anatomical gift by:

(1) A record signed by:

(A) The donor;

(B) The other person; or

(C) Subject to subsection (b) of this section, another individual acting at the direction of the donor or the other person if the donor or other person is physically unable to sign; or

(2) A later-executed document of gift, including a driver's license or identification card, that amends or revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency.

(b) A record signed pursuant to subsection (a)(1)(C) of this section shall:

(1) Be witnessed by at least 2 adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and

(2) State that it has been signed and witnessed as provided in paragraph (1) of this subsection.

(c) Subject to § 7-1531.07, a donor or other person authorized to make an anatomical gift under § 7-1531.03 may revoke an anatomical gift by the destruction or cancellation of the document of gift, or the portion of the document of gift used to make the gift, with the intent to revoke the gift.

(d) A donor may amend or revoke an anatomical gift that was not made in a will by any form of communication during a terminal illness or injury addressed to at least 2 adults, at least one of whom is a disinterested witness.

(e) A donor who makes an anatomical gift in a will may amend or revoke the gift in the manner provided for amendment or revocation of wills or as provided in subsection (a) of this section.

(Apr. 15, 2008, D.C. Law 17-145, § 6, 55 DCR 2532.)

Legislative history of Law 17-145. — For Law 17-145, see notes following § 7-1531.01.

Editor's notes. — Uniform Law: This sec-

tion is based upon § 6 of the Revised Uniform Anatomical Gift Act (2006).

§ 7-1531.06. Refusal to make anatomical gift; effect of refusal.

(a) An individual may refuse to make an anatomical gift of the individual's body or part by:

(1) A record signed by:

(A) The individual; or

(B) Subject to subsection (b) of this section, another individual acting at the direction of the individual if the individual is physically unable to sign;

(2) The individual's will, whether or not the will is admitted to probate or invalidated after the individual's death; or

(3) Any form of communication made by the individual during the individual's terminal illness or injury addressed to at least 2 adults, at least one of whom is a disinterested witness.

(b) A record signed pursuant to subsection (a)(1)(B) of this section shall:

(1) Be witnessed by at least 2 adults, at least one of whom is a disinterested witness, who have signed at the request of the individual; and

(2) State that it has been signed and witnessed as provided in paragraph (1) of this subsection.

(c) An individual who has made a refusal may amend or revoke the refusal:

(1) In the manner provided in subsection (a) of this section for making a refusal;

(2) By subsequently making an anatomical gift pursuant to § 7-1531.04 that is inconsistent with the refusal; or

(3) By destroying or cancelling the record evidencing the refusal, or the portion of the record used to make the refusal, with the intent to revoke the refusal.

(d) Except as otherwise provided in § 7-1531.07(h), in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift of the individual's body or part bars all other persons from making an anatomical gift of the individual's body or part.

(Apr. 15, 2008, D.C. Law 17-145, § 7, 55 DCR 2532.)

Legislative history of Law 17-145. — For Law 17-145, see notes following § 7-1531.01.

tion is based upon § 7 of the Revised Uniform Anatomical Gift Act (2006).

Editor's notes. — Uniform Law: This sec-

§ 7-1531.07. Preclusive effect of anatomical gift, amendment, or revocation.

(a) Except as otherwise provided in subsection (g) of this section and subject to subsection (f) of this section, in the absence of an express, contrary indication by the donor, a person other than the donor is barred from making, amending, or revoking an anatomical gift of a donor's body or part if the donor made an anatomical gift of the donor's body or part under § 7-1531.04 or an amendment to an anatomical gift of the donor's body or part under § 7-1531.05.

(b) A donor's revocation of an anatomical gift of the donor's body or part under § 7-1531.05 is not a refusal and does not bar another person specified in § 7-1531.03 or § 7-1531.08 from making an anatomical gift of the donor's body or part under § 7-1531.04 or § 7-1531.09.

(c) If a person other than the donor makes an unrevoked anatomical gift of the donor's body or part under § 7-1531.04 or an amendment to an anatomical gift of the donor's body or part under § 7-1531.05, another person may not make, amend, or revoke the gift of the donor's body or part under § 7-1531.09.

(d) A revocation of an anatomical gift of a donor's body or part under § 7-1531.05 by a person other than the donor does not bar another person from making an anatomical gift of the body or part under § 7-1531.04 or § 7-1531.09.

(e) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under § 7-1531.03, an anatomical gift of a part is neither a refusal to give another part nor a limitation on the making of an anatomical gift of another part at a later time by the donor or another person.

(f) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under § 7-1531.03, an anatomical gift of a part for one or more of the purposes set forth in § 7-1531.03 is not a limitation on the making of an anatomical gift of the part for any of the other purposes by the donor or any other person under § 7-1531.04 or § 7-1531.09.

(g) If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably available may revoke or amend an anatomical gift of the donor's body or part.

(h) If an unemancipated minor who signed a refusal dies, a parent of the minor who is reasonably available may revoke the minor's refusal.

(Apr. 15, 2008, D.C. Law 17-145, § 8, 55 DCR 2532; Mar. 25, 2009, D.C. Law 17-353, § 230(b), 56 DCR 1117.)

Effect of amendments. — D.C. Law 17-353 validated previously made technical corrections in subs. (b), (d), and (f).

Legislative history of Law 17-145. — For Law 17-145, see notes following § 7-1531.01.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 7-161.

Editor's notes. — Uniform Law: This section is based upon § 8 of the Revised Uniform Anatomical Gift Act (2006).

§ 7-1531.08. Who may make anatomical gift of decedent's body or part.

(a) Subject to subsections (b) and (c) of this section and unless barred by § 7-1531.06 or § 7-1531.07, an anatomical gift of a decedent's body or part for purpose of transplantation, therapy, research, or education may be made by any member of the following classes of persons who is reasonably available, in the order of priority listed:

- (1) An agent of the decedent at the time of death who could have made an anatomical gift under § 7-1531.03(2) immediately before the decedent's death;
- (2) The spouse or domestic partner of the decedent;
- (3) Adult children of the decedent;

(4)(A) Parents of the decedent; or

(B) If, at the time of death, there was a guardian of the decedent under a guardianship order under § 16-2389, the guardian, unless the order specifies otherwise;

(5) Adult siblings of the decedent;

(6) Adult grandchildren of the decedent;

(7) Grandparents of the decedent;

(8) An adult who exhibited special care and concern for the decedent;

(9) The persons who were acting as the guardians of the person of the decedent at the time of death; and

(10) Any other person having the authority to dispose of the decedent's body.

(b) If there is more than one member of a class listed in subsection (a)(1), (3), (4), (5), (6), (7), or (9) of this section entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to which the gift may pass under § 7-1531.10 knows of an objection by another member of the class. If an objection is known, the gift may be made only by a majority of the members of the class who are reasonably available.

(c) A person may not make an anatomical gift if, at the time of the decedent's death, a person in a prior class under subsection (a) of this section is reasonably available to make or to object to the making of an anatomical gift.

(Apr. 15, 2008, D.C. Law 17-145, § 9, 55 DCR 2532; Mar. 25, 2009, D.C. Law 17-353, § 230(c), 56 DCR 1117.)

Effect of amendments. — D.C. Law 17-353 validated a previously made technical correction in subsec. (a).

Legislative history of Law 17-145. — For Law 17-145, see notes following § 7-1531.01.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 7-161.

Editor's notes. — Uniform Law: This section is based upon § 9 of the Revised Uniform Anatomical Gift Act (2006).

§ 7-1531.09. Manner of making, amending, or revoking anatomical gift of decedent's body or part.

(a) A person authorized to make an anatomical gift under § 7-1531.08 may make an anatomical gift by a document of gift signed by the person making the gift or by that person's oral communication that is electronically recorded or is contemporaneously reduced to a record and signed by the individual receiving the oral communication.

(b) Subject to subsection (c) of this section, an anatomical gift by a person authorized under § 7-1531.08 may be amended or revoked orally or in a record by any member of a prior class who is reasonably available. If more than one member of the prior class is reasonably available, the gift made by a person authorized under § 7-1531.08 may be:

(1) Amended only if a majority of the reasonably available members agree to the amending of the gift; or

(2) Revoked only if:

(A) A majority of the reasonably available members agree to the revoking of the gift; or

(B) The members of the class described in § 7-1531.08(a)(4) are equally divided as to whether to revoke the gift.

(c) A revocation under subsection (b) of this section is effective only if, before an incision has been made to remove a part from the donor's body or before invasive procedures have begun to prepare the recipient, the procurement organization, transplant hospital, or physician or technician knows of the revocation.

(Apr. 15, 2008, D.C. Law 17-145, § 10, 55 DCR 2532.)

Legislative history of Law 17-145. — For Law 17-145, see notes following § 7-1531.01.

tion is based upon § 10 of the Revised Uniform Anatomical Gift Act (2006).

Editor's notes. — Uniform Law: This sec-

§ 7-1531.10. Persons that may receive anatomical gift; purpose of anatomical gift.

(a) An anatomical gift may be made to the following persons named in the document of gift:

(1) A hospital; accredited medical school, dental school, college, or university; organ procurement organization; or other appropriate person authorized by the Mayor, for research or education;

(2) Subject to subsection (b) of this section, an individual designated by the person making the anatomical gift if the individual is the recipient of the part; or

(3) An eye bank or tissue bank.

(b) If an anatomical gift to an individual under subsection (a)(2) of this section cannot be transplanted into the individual, the part passes in accordance with subsection (g) of this section in the absence of an express, contrary indication by the person making the anatomical gift.

(c) If an anatomical gift of one or more specific parts or of all parts is made in a document of gift that does not name a person described in subsection (a) of this section but identifies the purpose for which an anatomical gift may be used, the following rules apply:

(1) If the part is an eye and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate eye bank.

(2) If the part is tissue and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate tissue bank.

(3) If the part is an organ and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(4) If the part is an organ, an eye, or tissue and the gift is for the purpose of research or education, the gift passes to the appropriate procurement organization.

(d) For the purposes of subsection (c) of this section, if there is more than one purpose of an anatomical gift set forth in the document of gift but the purposes are not set forth in any priority, the gift shall be used for transplantation or therapy, if suitable. If the gift cannot be used for transplantation or therapy, the gift may be used for research or education.

(e) If an anatomical gift of one or more specific parts is made in a document of gift that does not name a person described in subsection (a) of this section and does not identify the purpose of the gift, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection (g) of this section.

(f) If a document of gift specifies only a general intent to make an anatomical gift by words such as “donor”, “organ donor”, or “body donor”, or by a symbol or statement of similar import, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection (g) of this section.

(g) For purposes of subsections (b), (e), and (f) of this section, the following rules apply:

- (1) If the part is an eye, the gift passes to the appropriate eye bank.
- (2) If the part is tissue, the gift passes to the appropriate tissue bank.
- (3) If the part is an organ, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(h) An anatomical gift of an organ for transplantation or therapy, other than an anatomical gift under subsection (a)(2) of this section, passes to the organ procurement organization as custodian of the organ.

(i) If an anatomical gift does not pass pursuant to subsections (a) through (h) of this section or the decedent’s body or part is not used for transplantation, therapy, research, or education, custody of the body or part passes to the person under obligation to dispose of the body or part.

(j) A person may not accept an anatomical gift if the person knows that the gift was not effectively made under § 7-1531.04 or § 7-1531.09 or if the person knows that the decedent made a refusal under § 7-1531.06 that was not revoked. For the purposes of the subsection, if a person knows that an anatomical gift was made on a document of gift, the person is deemed to know of any amendment or revocation of the gift or any refusal to make an anatomical gift on the same document of gift.

(k) Except as otherwise provided in subsection (a)(2) of this section, nothing in this subchapter affects the allocation of organs for transplantation or therapy.

(Apr. 15, 2008, D.C. Law 17-145, § 11, 55 DCR 2532; Mar. 25, 2009, D.C. Law 17-353, § 230(d), 56 DCR 1117.)

Effect of amendments. — D.C. Law 17-353 validated a previously made technical correction in subsec. (j).

Legislative history of Law 17-145. — For Law 17-145, see notes following § 7-1531.01.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 7-161.

Editor’s notes. — Uniform Law: This section is based upon § 11 of the Revised Uniform Anatomical Gift Act (2006).

§ 7-1531.11. Search and notification.

(a) The following persons shall make a reasonable search of an individual who the person reasonably believes is dead or whose death is imminent for a document of gift or other information identifying the individual as a donor or as an individual who made a refusal:

(1) A law enforcement officer, firefighter, paramedic, or other emergency rescuer finding the individual; and

(2) If no other source of the information is immediately available, a hospital, as soon as practical after the individual's arrival at the hospital.

(b) If a document of gift or a refusal to make an anatomical gift is located by the search required by subsection (a)(1) of this section and the individual or deceased individual to whom it relates is taken to a hospital, the person responsible for conducting the search shall send the document of gift or refusal to the hospital.

(c) A person is not subject to criminal or civil liability for failing to discharge the duties imposed by this section, but may be subject to administrative sanctions.

(Apr. 15, 2008, D.C. Law 17-145, § 12, 55 DCR 2532.)

Legislative history of Law 17-145. — For Law 17-145, see notes following § 7-1531.01.

Editor's notes. — Uniform Law: This sec-

tion is based upon § 12 of the Revised Uniform Anatomical Gift Act (2006).

§ 7-1531.12. Delivery of document of gift not required; right to examine.

(a) A document of gift need not be delivered during the donor's lifetime to be effective.

(b) Upon or after an individual's death, a person in possession of a document of gift or a refusal to make an anatomical gift with respect to the individual shall allow examination and copying of the document of gift or refusal by a person authorized to make or object to the making of an anatomical gift with respect to the individual or by a person to which the gift could pass under § 7-1531.10.

(Apr. 15, 2008, D.C. Law 17-145, § 13, 55 DCR 2532.)

Legislative history of Law 17-145. — For Law 17-145, see notes following § 7-1531.01.

Editor's notes. — Uniform Law: This sec-

tion is based upon § 13 of the Revised Uniform Anatomical Gift Act (2006).

§ 7-1531.13. Rights and duties of procurement organization and others.

(a) When a hospital or hospice refers an individual who is dead or whose death is imminent to a procurement organization, the organization shall make a reasonable search of the records of the Department of Motor Vehicles and any donor registry that it knows exists for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.

(b) A procurement organization shall be allowed reasonable access to information in the records of the Department of Motor Vehicles to ascertain whether an individual who is dead or whose death is imminent is a donor.

(c) When a hospital or hospice refers an individual who is dead or whose death is imminent to a procurement organization, the organization may

conduct any reasonable examination necessary to ensure the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor. During the examination period, measures necessary to ensure the medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent.

(d) Unless prohibited by law other than this subchapter, at any time after a donor's death, the person to which a part passes under § 7-1531.10 may conduct any reasonable examination necessary to ensure the medical suitability of the body or part for its intended purpose.

(e) Unless prohibited by law other than this subchapter, an examination under subsection (c) or (d) of this section may include an examination of all medical and dental records of the donor or prospective donor.

(f) Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.

(g) Upon referral by a hospital or hospice under subsection (a) of this section, a procurement organization shall make a reasonable search for any person listed in § 7-1531.08 having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information.

(h) Subject to §§ 7-1531.10(i) and § 7-1531.22, the rights of the person to which a part passes under § 7-1531.10 are superior to the rights of all others with respect to the part. The person may accept or reject an anatomical gift in whole or in part. Subject to the terms of the document of gift and this subchapter, a person that accepts an anatomical gift of an entire body may allow embalming, burial, or cremation, and use of remains in a funeral service. If the gift is of a part, the person to which the part passes under § 7-1531.10, upon the death of the donor and before embalming, burial, or cremation, shall cause the part to be removed without unnecessary mutilation.

(i) Neither the physician who attends the decedent at death nor the physician who determines the time of the decedent's death may participate in the procedures for removing or transplanting a part from the decedent.

(j) A physician or technician may remove a donated part from the body of a donor that the physician or technician is qualified to remove.

(Apr. 15, 2008, D.C. Law 17-145, § 14, 55 DCR 2532.)

Legislative history of Law 17-145. — For Law 17-145, see notes following § 7-1531.01.

Editor's notes. — Uniform Law: This sec-

tion is based upon § 14 of the Revised Uniform Anatomical Gift Act (2006).

§ 7-1531.14. Coordination of procurement and use.

Each hospital in the District of Columbia shall enter into agreements or

affiliations with procurement organizations for coordination of procurement and use of anatomical gifts.

(Apr. 15, 2008, D.C. Law 17-145, § 15, 55 DCR 2532.)

Legislative history of Law 17-145. — For Law 17-145, see notes following § 7-1531.01.

Editor's notes. — Uniform Law: This sec-

tion is based upon § 15 of the Revised Uniform Anatomical Gift Act (2006).

§ 7-1531.15. Sale or purchase of parts prohibited.

(a) Except as otherwise provided in subsection (b) of this section, a person that, for valuable consideration, knowingly purchases or sells a part for transplantation, therapy, research, education, or any other purpose, if removal of a part from an individual is intended to occur after the individual's death, commits a felony and upon conviction is subject to a fine not exceeding \$50,000, imprisonment not exceeding 5 years, or both.

(b) A person may charge a reasonable amount for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a part.

(Apr. 15, 2008, D.C. Law 17-145, § 16, 55 DCR 2532.)

Legislative history of Law 17-145. — For Law 17-145, see notes following § 7-1531.01.

Editor's notes. — Uniform Law: This sec-

tion is based upon § 16 of the Revised Uniform Anatomical Gift Act (2006).

§ 7-1531.16. Other prohibited acts.

A person that, in order to obtain a financial gain, intentionally falsifies, forges, conceals, defaces, or obliterates a document of gift, an amendment or revocation of a document of gift, or a refusal commits a felony and upon conviction is subject to a fine not exceeding \$50,000, imprisonment not exceeding 5 years, or both.

(Apr. 15, 2008, D.C. Law 17-145, § 17, 55 DCR 2532.)

Legislative history of Law 17-145. — For Law 17-145, see notes following § 7-1531.01.

Editor's notes. — Uniform Law: This sec-

tion is based upon § 17 of the Revised Uniform Anatomical Gift Act (2006).

§ 7-1531.17. Immunity.

(a) A person that acts in accordance with this subchapter or with the applicable anatomical gift law of another state, or attempts in good faith to do so, is not liable for the act in a civil action, criminal prosecution, or administrative proceeding.

(b) Neither the person making an anatomical gift nor the donor's estate is liable for any injury or damage that results from the making or use of the gift.

(c) In determining whether an anatomical gift has been made, amended, or revoked under this subsection, a person may rely upon representations of an individual listed in § 7-1531.08(a)(2), (3), (4), (5), (6), (7), or (8) relating to the

individual's relationship to the donor or prospective donor unless the person knows that the representation is untrue.

(Apr. 15, 2008, D.C. Law 17-145, § 18, 55 DCR 2532.)

Legislative history of Law 17-145. — For Law 17-145, see notes following § 7-1531.01. tion is based upon § 18 of the Revised Uniform Anatomical Gift Act (2006).

Editor's notes. — Uniform Law: This sec-

§ 7-1531.18. Law governing validity; choice of law as to execution of document of gift; presumption of validity.

(a) A document of gift is valid if executed in accordance with:

- (1) This subchapter;
- (2) The laws of the state or country where it was executed; or
- (3) The laws of the state or country where the person making the anatomical gift was domiciled, has a place of residence, or was a national at the time the document of gift was executed.

(b) If a document of gift is valid under this section, the law of the District of Columbia governs the interpretation of the document of gift.

(c) A person may presume that a document of gift or amendment of an anatomical gift is valid unless that person knows that it was not validly executed or was revoked.

(Apr. 15, 2008, D.C. Law 17-145, § 19, 55 DCR 2532.)

Legislative history of Law 17-145. — For Law 17-145, see notes following § 7-1531.01. tion is based upon § 19 of the Revised Uniform Anatomical Gift Act (2006).

Editor's notes. — Uniform Law: This sec-

§ 7-1531.19. Establishment of the donor registry.

There is established a donor registry for residents of the District of Columbia, which shall be maintained by the federally designated organ procurement organization serving the District of Columbia.

(Apr. 15, 2008, D.C. Law 17-145, § 20, 55 DCR 2532.)

Legislative history of Law 17-145. — For Law 17-145, see notes following § 7-1531.01. tion is based upon § 20 of the Revised Uniform Anatomical Gift Act (2006).

Editor's notes. — Uniform Law: This sec-

§ 7-1531.19a. Access to Registry information.

Unless otherwise authorized by District of Columbia or federal law, information in the Registry shall be accessible only to:

- (1) The organ procurement organization serving the District of Columbia; and
- (2) An agency licensed in or authorized by the laws of another state, when a District resident is a donor of an anatomical gift and is not located in the

District of Columbia at the time of donor's death or immediately before the time of death.

(Apr. 15, 2008, D.C. Law 17-145, § 20a, 55 DCR 2532.)

Legislative history of Law 17-145. — For Law 17-145, see notes following § 7-1531.01.

§ 7-1531.19b. Sources of Registry information; confidentiality.

(a) The organ procurement organization:

(1) May acquire and use donor information from all available sources; and

(2) Shall acquire and use donor information from the Department of Motor Vehicles submitted in accordance with § 7-1531.19c and with any regulations promulgated pursuant to § 7-1531.19f.

(b) Personally identifiable information on the Registry about a donor or prospective donor may not be used or disclosed without the express consent of the donor, prospective donor, or person that made the anatomical gift for any purpose other than to determine whether the donor or prospective donor has made, amended, or revoked an anatomical gift.

(Apr. 15, 2008, D.C. Law 17-145, § 20b, 55 DCR 2532.)

Legislative history of Law 17-145. — For Law 17-145, see notes following § 7-1531.01.

§ 7-1531.19c. Department of Motor Vehicles transfer of Registry information requirements.

(a) The Department of Motor Vehicles shall transfer to the designated organ procurement organization the name, gender, date of birth, and most recent address of any person who obtains a driver's license or identification card and who has made or revoked an anatomical gift.

(b)(1) The initial transfer of donor information shall be transferred to the organ procurement organization by the Department of Motor Vehicles within 30 days of receipt of a written request from the organ procurement organization.

(2) All subsequent transfers of donor information, new and revisions to previously submitted information, shall be submitted monthly, or as otherwise determined by the Mayor, at no charge to the organ procurement organization.

(Apr. 15, 2008, D.C. Law 17-145, § 20c, 55 DCR 2532.)

Legislative history of Law 17-145. — For Law 17-145, see notes following § 7-1531.01.

§ 7-1531.19d. Effect of amendment or revocation of anatomical gift upon Registry.

(a) If a donor amends an anatomical gift, or revokes one or more, but not all,

anatomical gifts, the Registry shall be promptly revised to reflect the gift or gifts as amended.

(b) If a donor revokes all anatomical gifts, the name of the former donor shall be promptly removed from the Registry.

(Apr. 15, 2008, D.C. Law 17-145, § 20d, 55 DCR 2532.)

Legislative history of Law 17-145. — For Law 17-145, see notes following § 7-1531.01.

§ 7-1531.19e. Donor status not dependent on being listed in Registry.

A person shall not be required to be listed in the Registry to be a donor.

(Apr. 15, 2008, D.C. Law 17-145, § 20e, 55 DCR 2532.)

Legislative history of Law 17-145. — For Law 17-145, see notes following § 7-1531.01.

§ 7-1531.19f. Rulemaking for Registry.

The Mayor may issue rules necessary to implement the provisions of §§ 7-1531.19 through 7-1531.19e.

(Apr. 15, 2008, D.C. Law 17-145, § 20f, 55 DCR 2532.)

Legislative history of Law 17-145. — For Law 17-145, see notes following § 7-1531.01.

§ 7-1531.20. Effect of anatomical gift on advance health-care directive.

(a) For the purposes of this section, the term:

(1) “Advance health-care directive” means a power of attorney for health care or a record signed or authorized by a prospective donor containing the prospective donor’s direction concerning a health-care decision for the prospective donor.

(2) “Declaration” means a record signed by a prospective donor specifying the circumstances under which a life-support system may be withheld or withdrawn from the prospective donor.

(3) “Health-care decision” means any decision regarding the health care of the prospective donor.

(b)(1) If a prospective donor has a declaration or advance health-care directive and the terms of the declaration or directive and the express or implied terms of a potential anatomical gift are in conflict with regard to the administration of measures necessary to ensure the medical suitability of a part for transplantation or therapy, the prospective donor’s attending physician and prospective donor shall confer to resolve the conflict.

(2) If the prospective donor is incapable of resolving the conflict, an agent acting under the prospective donor’s declaration or directive, or, if none or the agent is not reasonably available, another person authorized by law other than

this subsection to make health-care decisions on behalf of the prospective donor, shall act for the donor to resolve the conflict.

(3) The conflict shall be resolved as expeditiously as possible.

(4) Information relevant to the resolution of the conflict may be obtained from the appropriate procurement organization and any other person authorized to make an anatomical gift for the prospective donor under § 7-1531.08.

(5) Before resolution of the conflict, measures necessary to ensure the medical suitability of the part may not be withheld or withdrawn from the prospective donor if withholding or withdrawing the measures is not contraindicated by appropriate end-of-life care.

(Apr. 15, 2008, D.C. Law 17-145, § 21, 55 DCR 2532.)

Legislative history of Law 17-145. — For Law 17-145, see notes following § 7-1531.01.

Editor's notes. — Uniform Law: This sec-

tion is based upon § 21 of the Revised Uniform Anatomical Gift Act (2006).

§ 7-1531.21. Cooperation between the Chief Medical Examiner and procurement organizations.

(a) The Chief Medical Examiner and Office of the Chief Medical Examiner shall cooperate with procurement organizations to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or education. The Office of the Chief Medical Examiner and procurement organizations shall in good faith develop and agree upon protocols in a memorandum of understanding to achieve this objective and shall evaluate the effectiveness of the memorandum of understanding at regular intervals, but no less frequently than every 2 years.

(b) If the Chief Medical Examiner receives notice from a procurement organization that an anatomical gift might be available or was made with respect to a decedent whose body is under the jurisdiction of the Chief Medical Examiner and a post-mortem examination is going to be performed, unless the Chief Medical Examiner denies recovery of a specific part or parts in accordance with § 7-1531.22, the Chief Medical Examiner, or designee, shall conduct a post-mortem examination of the body or the part in a manner and within a period compatible with its preservation for the purposes of the gift.

(c)(1) A part may not be removed from the body of a decedent under the jurisdiction of the Chief Medical Examiner for transplantation, therapy, research, or education unless the part is the subject of an anatomical gift and the Chief Medical Examiner has been notified before the part is removed from the decedent and has approved the removal.

(2) Except as provided in subsection (d) of this section, the body of a decedent under the jurisdiction of the Chief Medical Examiner may not be delivered to a person for research or education unless the body is the subject of an anatomical gift.

(3) Nothing in this subsection shall be construed as precluding the Chief Medical Examiner from performing the medicolegal investigation upon the body or parts of a decedent under the jurisdiction of the Chief Medical Examiner.

(d) The body of a decedent under the jurisdiction of the Chief Medical Examiner may be delivered for use in an exhibition in connection with a governmental museum or institution of learning permanently located in the District of Columbia in accordance with § 43-120; provided, that the Chief Medical Examiner must be notified before the body is delivered for such purposes.

(Apr. 15, 2008, D.C. Law 17-145, § 22, 55 DCR 2532.)

Legislative history of Law 17-145. — For Law 17-145, see notes following § 7-1531.01. tion is based upon § 22 of the Revised Uniform Anatomical Gift Act (2006).

Editor's notes. — Uniform Law: This sec-

§ 7-1531.22. Facilitation of anatomical gift from decedent whose body is under jurisdiction of Chief Medical Examiner.

(a)(1) The relationship between the Office of the Chief Medical Examiner and a procurement organization shall be governed by a memorandum of understanding between the Chief Medical Examiner and the procurement organization, which shall contain protocols to resolve any conflicts between the Chief Medical Examiner and the procurement organization.

(2) The time period within which a recovery must be performed to be compatible with the preservation of the part or parts for the purpose of transplantation, therapy, research, or education shall be medically determined, based on the best practices for the recovery of parts, pursuant to the pertinent protocols in the memorandum of understanding.

(b)(1) Upon request of a procurement organization pursuant to an anatomical gift, the Chief Medical Examiner shall release to the procurement organization the name, contact information, and available medical and social history of a decedent whose body is under the jurisdiction of the Chief Medical Examiner.

(2) If the decedent's body or part is medically suitable for transplantation, therapy, research, or education, as determined by the appropriate procurement organization, the Chief Medical Examiner shall release post-mortem examination results to the procurement organization.

(3) The procurement organization and any other recipient may make a subsequent disclosure of the post-mortem examination results or other information received from the Chief Medical Examiner only if relevant to transplantation, therapy, research, or education.

(c) The Chief Medical Examiner may conduct a medicolegal examination by reviewing all medical records, laboratory test results, x-rays, other diagnostic results, and other information that any person possesses about a donor or prospective donor whose body is under the jurisdiction of the Chief Medical Examiner which the Chief Medical Examiner determines may be relevant to the investigation.

(d) A person that has any information requested by the Chief Medical Examiner pursuant to subsection (c) of this section shall provide that information as expeditiously as possible to allow the Chief Medical Examiner to

conduct the medicolegal investigation within a period compatible with the preservation of parts for the purpose of transplantation, therapy, research, or education.

(e) If an anatomical gift has been or might be made of a part of a decedent whose body is under the jurisdiction of the Chief Medical Examiner and the Chief Medical Examiner determines that a post-mortem examination is not required, or the Chief Medical Examiner determines that a post-mortem examination is required but that the recovery of the part that is the subject of an anatomical gift will not interfere with the examination, the Chief Medical Examiner and procurement organization shall cooperate in the timely removal of the part from the decedent for the purpose of transplantation, therapy, research, or education.

(f)(1) If an anatomical gift of a part from the decedent under the jurisdiction of the Chief Medical Examiner has been or might be made, but the Chief Medical Examiner initially believes that the recovery of the part could interfere with the post-mortem investigation into the decedent's cause or manner of death, the Chief Medical Examiner shall consult with the procurement organization, or a physician or technician designated by the procurement organization, and, at the discretion of the Chief Medical Examiner, with an attending physician, about the proposed recovery within a period compatible with the preservation of the part for the appropriate purpose.

(2) After consultation, the Chief Medical Examiner may allow or deny the recovery of the part.

(3) The Chief Medical Examiner shall allow recovery of a part if the Chief Medical Examiner determines that recovery would not interfere with the post-mortem investigation into the decedent's cause or manner of death.

(g)(1) Following the consultation required under subsection (f) of this section, if the Chief Medical Examiner has not been able to expeditiously determine whether to allow recovery of the part, the Chief Medical Examiner, or designee, at the request of the procurement organization, may attend the removal procedure for the part before making a final determination not to allow the procurement organization to recover the part.

(2) During the removal procedure, the Chief Medical Examiner, or designee, may allow recovery of the part by the procurement organization to proceed, or, if the Chief Medical Examiner, or designee, reasonably believes that the part may be involved in determining the decedent's cause or manner of death, deny recovery by the procurement organization.

(3) If, during the removal procedure, the physician engaged by the procurement organization to recover the part discovers evidence that indicates that the cause of death may be suspicious, the physician shall immediately inform the Chief Medical Examiner of this information and shall not continue or undertake any procedures that would compromise this evidence without the approval of the Chief Medical Examiner.

(h) Except as otherwise provided in the memorandum of understanding described in subsection (a) of this section or a protocol pursuant thereto, if the Chief Medical Examiner, or designee, denies recovery under subsection (g) of this section, the Chief Medical Examiner, or designee, shall:

(1) Explain in a record the specific reasons for not allowing recovery of the part;

(2) Include the specific reasons in the records of the Chief Medical Examiner; and

(3) Provide a record with the specific reasons to the procurement organization.

(i) If the Chief Medical Examiner, or designee, allows recovery of a part, the procurement organization, upon request, shall cause the physician or technician who removes the part to provide the Chief Medical Examiner with a record describing the condition of the part, a biopsy, a photograph, and any other information and observations that would assist in the post-mortem examination.

(Apr. 15, 2008, D.C. Law 17-145, § 23, 55 DCR 2532.)

Legislative history of Law 17-145. — For Law 17-145, see notes following § 7-1531.01. tion is based upon § 23 of the Revised Uniform Anatomical Gift Act (2006).

Editor's notes. — Uniform Law: This sec-

§ 7-1531.23. Uniformity of application and construction.

In applying and construing this subchapter, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

(Apr. 15, 2008, D.C. Law 17-145, § 24, 55 DCR 2532.)

Legislative history of Law 17-145. — For Law 17-145, see notes following § 7-1531.01. tion is based upon § 24 of the Revised Uniform Anatomical Gift Act (2006).

Editor's notes. — Uniform Law: This sec-

§ 7-1531.24. Duties of hospitals and hospices.

(a) Whenever a patient of a hospital or hospice dies, is determined to be a suitable candidate for organ or tissue donation, and has not made an anatomical gift by will or document of gift, a representative of the hospital or hospice shall, in accordance with § 7-1531.08, request a person authorized by that section to consent to an anatomical gift of all or part of the decedent's body.

(b) The request required by subsection (a) of this section shall be made only if a procurement organization has notified the hospital or hospice that a donation can be properly obtained and used in a manner consistent with accepted medical standards.

(c) Upon the discovery of a properly executed document of gift or the receipt of a consent under subsection (a) of this section, a hospital or hospice shall immediately notify a procurement organization and shall cooperate in procuring the anatomical gift.

(Apr. 15, 2008, D.C. Law 17-145, § 25, 55 DCR 2532.)

Legislative history of Law 17-145. — For Law 17-145, see notes following § 7-1531.01.

§ 7-1531.25. Organ preservation.

(a) If a person authorized by § 7-1531.08 to consent to an anatomical gift of all or part of the decedent's body is not reasonably available for a representative of a hospital to make the request required by § 7-1531.24, the hospital may use organ preservation equipment and techniques, including ventilators and in situ flushing and cooling equipment, to maintain the viability of the decedent's organs in order to preserve the option of family members and other authorized persons to consider donation.

(b) If a hospital initiates the preservation of a decedent's organs pursuant to subsection (a) of this section, the hospital shall use all available means to locate a person authorized by § 7-1531.08 to consent to an anatomical gift. If a person authorized by § 7-1531.08 to consent to an anatomical gift cannot be located within a time period deemed reasonable by a designated medical professional, or declines to consent to an anatomical gift, the organ preservation procedure shall be discontinued.

(c) A person authorized by § 7-1531.08 to donate all or any part of a decedent's body shall be given full disclosure of preservation techniques or preservation equipment used, if any.

(d) In the absence of gross negligence or willful misconduct, any person employed or authorized by a hospital to utilize organ preservation techniques pursuant to subsection (a) of this section shall be immune from any civil or criminal liability in connection with taking the medically necessary steps to preserve a decedent's organs during the search for, or consultation with, a person authorized by § 7-1531.08 to consent to an anatomical gift.

(e) Neither a decedent nor relative or guardian of a decedent shall pay any costs associated with organ preservation.

(f) A hospital that initiates organ preservation pursuant to subsection (a) of this section shall bear all costs associated with the organ preservation upon the happening of any of the following:

(1) The recipient of the preserved organ is indigent;

(2) A person authorized by § 7-1531.08 to consent to an anatomical gift cannot be located within a time period deemed reasonable by a designated medical professional; or

(3) A person authorized by § 7-1531.08 to consent to an anatomical gift does not consent to an anatomical gift of all or part of a decedent's body.

(Apr. 15, 2008, D.C. Law 17-145, § 26, 55 DCR 2532; Mar. 25, 2009, D.C. Law 17-353, § 230(e), 56 DCR 1117.)

Effect of amendments. — D.C. Law 17-353 validated a previously made technical correction in the section heading.

Legislative history of Law 17-145. — For Law 17-145, see notes following § 7-1531.01.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 7-161.

§ 7-1531.26. Certificate requirement.

(a) Whenever a request for consent is made pursuant to § 7-1531.24, the hospital or hospice representative making the request shall complete a

certificate of request for an anatomical gift on a form to be supplied by the Mayor. The certificate shall include the following:

- (1) A statement indicating that a request for an anatomical gift was made;
- (2) The name and affiliation of the person making the request;
- (3) An indication of whether consent was granted and, if so, what organs and tissues were donated; and
- (4) The name of the person granting or refusing the request, and his or her relationship to the decedent.

(b) A copy of the certificate described in subsection (a) of this section shall be included in the decedent's medical record.

(Apr. 15, 2008, D.C. Law 17-145, § 27, 55 DCR 2532.)

Legislative history of Law 17-145. — For Law 17-145, see notes following § 7-1531.01.

§ 7-1531.27. Rules.

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], shall issue all rules necessary to carry out the purposes of § 7-1531.24 and § 7-1531.26. These rules shall include, at a minimum:

- (1) Standards for the training and qualification of those hospital and hospice representatives who have been designated to make consent requests pursuant to § 7-1531.24;
- (2) Procedures to be used when making consent requests under § 7-1531.24; and
- (3) Procedures to facilitate effective coordination among hospitals, hospices, other health-care facilities and agencies, organ and tissue banks, and procurement organizations.

(Apr. 15, 2008, D.C. Law 17-145, § 28, 55 DCR 2532.)

Legislative history of Law 17-145. — For Law 17-145, see notes following § 7-1531.01.

§ 7-1531.28. Relation to Electronic Signatures in Global and National Commerce Act.

This subchapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, approved June 30, 2000 (114 Stat. 467; 15 U.S.C. § 7001 et seq.), but does not modify, limit, or supersede section 101(a) of that act (15 U.S.C. § 7001), or authorize electronic delivery of any of the notices described in section 103(b) of that act (15 U.S.C. § 7003(b)).

(Apr. 15, 2008, D.C. Law 17-145, § 29, 55 DCR 2532.)

Legislative history of Law 17-145. — For Law 17-145, see notes following § 7-1531.01.

*Subchapter III. Human Tissue Banks.***§ 7-1541.01. Statement of policy and purpose.**

Because of the rapid medical progress in the field of tissue preservation, tissue transplantation, and tissue culture, and because it is in the public interest to aid the development of this field of medicine, it is the policy and purpose of Congress in enacting this subchapter and the amendments to §§ 43-119 and 43-125 to encourage and aid the development of reconstructive medicine and surgery and the development of medico-surgical research by providing for the licensing and regulation of tissue banks, and by facilitating antemortem and postmortem authorizations for donations of tissue.

(Sept. 10, 1962, 76 Stat. 534, Pub. L. 87-656, § 2.)

Prior Codifications. — 1981 Ed., § 2-1601. 1973 Ed., § 2-251.

§ 7-1541.02. Definitions.

For the purposes of this subchapter and §§ 43-119 and 43-125, except where the context indicates a different meaning:

- (1) Repealed.
- (2) Repealed.
- (3) Repealed.

(4) "Tissue bank" means a facility for the recovery, screening, testing, processing, storage, or distribution of tissue for the purposes set forth in subchapter II-A of this chapter [§ 7-1531.01 et seq.], and for the purposes of reconstructive medicine and surgery, and research and teaching in reconstructive medicine and surgery; provided, that the facility is accredited by the American Association of Tissue Banks.

(Sept. 10, 1962, 76 Stat. 534, Pub. L. 87-656, § 3; May 26, 1970, 84 Stat. 270, Pub. L. 91-268, § 9(a); Apr. 15, 2008, D.C. Law 17-145, § 30(e)(1), 55 DCR 2532; Mar. 25, 2009, D.C. Law 17-353, § 230(f), 56 DCR 1117.)

Prior Codifications. — 1981 Ed., § 2-1602. 1973 Ed., § 2-252.

Effect of amendments. — D.C. Law 17-145 repealed pars. (1), (2), and (3) and rewrote par. (4), which had read as follows:

D.C. Law 17-353 validated a previously made technical correction in par. (4).

Legislative history of Law 17-145. — For Law 17-145, see notes following § 7-1501.01.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 7-161.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmen-

tal Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 7-1541.03. Licenses.

(a) No person shall operate any tissue bank in the District of Columbia without a valid license issued pursuant to this subchapter and §§ 43-119 and 43-125. No such license shall be issued except to persons duly licensed or duly registered as physicians under Chapter 12 of Title 3 or to persons holding valid licenses to operate and maintain hospitals for humans pursuant to Chapter 5 of Title 44.

(b) The Council of the District of Columbia is authorized, after public hearing, to adopt and promulgate rules and regulations to carry out the purposes of this subchapter and subchapter II-A of this chapter, including, without limitation, rules and regulations prescribing:

(1) The terms and conditions under which a tissue bank license may be issued and renewed;

(2) The fees to be paid for the issuance and renewal of such licenses;

(3) The duration of such licenses;

(4) The grounds for suspension and revocation of such licenses;

(5) The operation of tissue banks;

(6) The conditions under which tissue may be recovered, screened, tested, processed, stored, distributed, and transported; and

(7) The making, keeping, and disposition of records by tissue banks or by other persons recovering, screening, testing, processing, storing, distributing, or transporting tissue.

(c) The Mayor may, after notice and hearing, deny, suspend, or revoke any tissue bank license issued or applied for pursuant to this subchapter and §§ 43-119 and 43-125.

(d) Any person aggrieved by any final decision or final order of the Mayor denying, suspending, or revoking any tissue bank license or renewal thereof, issued or applied for under this subchapter and §§ 43-119 and 43-125, may obtain a review of such decision or order in the District of Columbia Court of Appeals.

(e) Except with respect to the provisions as to licensing, the provisions of this subchapter and §§ 43-119 and 43-125, and the regulations made pursuant thereto, shall apply to federal agencies situated in the District of Columbia, and to District of Columbia agencies.

(Sept. 10, 1962, 76 Stat. 535, Pub. L. 87-656, § 4; July 8, 1963, 77 Stat. 78, Pub. L. 88-60, § 6; May 26, 1970, 84 Stat. 270, Pub. L. 91-268, § 9(b); July 29, 1970, 84 Stat. 585, Pub. L. 91-358, title I, § 164(f); May 10, 1989, D.C. Law 7-231, § 8, 36 DCR 492; Apr. 15, 2008, D.C. Law 17-145, § 30(e)(2), 55 DCR 2532; Mar. 25, 2009, D.C. Law 17-353, § 230(f), 56 DCR 1117.)

Cross references. — Embalming of dead bodies, handling of tissue, see § 43-125.

Prior Codifications. — 1981 Ed., § 2-1603. 1973 Ed., § 2-253.

Effect of amendments. — D.C. Law 17-145, in the introductory language of subsec. (b), substituted “subchapter II-A of this chapter 15” for “subchapter II of this chapter 15”; in subsec.

(b)(6), substituted “recovered, screened, tested, processed, stored, distributed, and transported” for “processed, preserved, stored, and transported”; and, in subsec. (b)(7), substituted “recovering, screening, testing, processing, storing, distributing, or transporting” for “processing, preserving, storing, or transporting”.

D.C. Law 17-353 validated a previously made technical correction in subsec. (b).

Legislative history of Law 7-231. — Law 7-231, the “Technical Amendments Act of 1988,” was introduced in Council and assigned Bill No. 7-586, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-285 and transmitted to both Houses of Congress for its review.

Legislative history of Law 17-145. — For Law 17-145, see notes following § 7-1501.01.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 7-161.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of

Columbia and its Various Forms of Governmental Organization in Volume 1). Section 402(36) of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 7-1541.04. Penalties; prosecutions.

(a) Any person violating any provision of this subchapter and the amendments to §§ 43-119 and 43-125, or any regulation made pursuant to this subchapter and the amendments to §§ 43-119 and 43-125, shall be fined not more than \$300, or be imprisoned for not more than 90 days. Prosecution for violations of this subchapter and the amendments to §§ 43-119 and 43-125 and regulations made pursuant thereto shall be brought in the name of the District of Columbia.

(b) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this subchapter, or any rules or regulations issued under the authority of this subchapter pursuant to Chapter 18 of Title 2. Adjudication of any infraction of this subchapter shall be pursuant to Chapter 18 of Title 2.

(Sept. 10, 1962, 76 Stat. 535, Pub. L. 87-656, § 5; Oct. 5, 1985, D.C. Law 6-42, § 430, 32 DCR 4450.)

Prior Codifications. — 1981 Ed., § 2-1604. 1973 Ed., § 2-254.

Legislative history of Law 6-42. — Law 6-42, the “Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985,” was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on

Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned Act No. 6-60 and transmitted to both Houses of Congress for its review.

§ 7-1541.05. Authorization by the Chief Medical Examiner. [Repealed].

Repealed.

(Sept. 10, 1962, 76 Stat. 536, Pub. L. 87-656, § 9; May 26, 1970, 84 Stat. 270, Pub. L. 91-268, § 9(d); July 29, 1970, 84 Stat. 579, Pub. L. 91-358, title I, § 160(b); Mar. 5, 1981, D.C. Law 3-145, § 2, 27 DCR 4663; Sept. 29, 1992, D.C.

Law 9-157, § 3, 39 DCR 5686; Oct. 19, 2000, D.C. Law 13-172, § 2919(b), 47 DCR 6308; Apr. 15, 2008, D.C. Law 17-145, § 30)(e)(3), 55 DCR 2532.)

Prior Codifications. — 1981 Ed., § 2-1605. 1973 Ed., § 2-258.

Emergency legislation. — For temporary (90-day) amendment of section, see § 2919(b) of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see § 2919(b) of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 3-145. — Law 3-145, the “District of Columbia Tissue Bank Act Amendment of 1980,” was introduced in Council and assigned Bill No. 3-312. The Bill was adopted on first and second readings on September 16, 1980, and September 30, 1980, respectively. Signed by the Mayor on October 14, 1980, it was assigned Act No. 3-266 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-157. — Law 9-157, the “Tissue Transplantation Distribution Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-278, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 2, 1992, and July 7, 1992, respectively. Signed by the Mayor on July 21, 1992, it was assigned Act No. 9-251 and transmitted to both Houses of Congress for its review. D.C. Law 9-157 became effective on September 29, 1992.

Legislative history of Law 13-172. — Law 13-172, the “Fiscal Year 2001 Budget Support Act of 2000,” was introduced in Council and

assigned Bill No. 13-679, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 18, 2000, and June 6, 2000, respectively. Signed by the Mayor on June 26, 2000, it was assigned Act No. 13-375 and transmitted to both Houses of Congress for its review. D.C. Law 13-172 became effective on October 19, 2000.

Legislative history of Law 17-145. — For Law 17-145, see notes following § 7-1501.01.

Editor’s notes. — Mayor authorized to issue rules: Section 4 of D.C. Law 9-157 provided that the Mayor shall issue rules to implement the provisions of the act.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 7-1541.05a. Authority of organ procurement organization acting on behalf of eye bank or tissue bank.

An organ procurement organization may screen, test, or recover eyes or tissues on behalf of an eye bank or tissue bank.

(Sept. 10, 1962, 76 Stat. 537, Pub. L. 87-656, § 9a, as added Apr. 15, 2008, D.C. Law 17-145, § 30)(e)(4), 55 DCR 2532.)

Legislative history of Law 17-145. — For Law 17-145, see notes following § 7-1501.01.

§ 7-1541.06. Exemptions from subchapter.

Nothing in this subchapter and §§ 43-119 and 43-125 shall be construed:

(1) To prohibit funeral directors, licensed pursuant to §§ 3-405 and 3-406, from discharging their duties; or

(2) To prohibit or affect in any way the authority, duties, rights, or obligations vested, imposed, or granted by Chapter 2 of Title 3.

(Sept. 10, 1962, 76 Stat. 537, Pub. L. 87-656, § 12; Feb. 24, 1987, D.C. Law 6-192, § 23, 33 DCR 7836.)

Prior Codifications. — 1981 Ed., § 2-1606. 1973 Ed., § 2-259.

Legislative history of Law 6-192. — Law 6-192, the "Technical Amendments Act of 1986," was introduced in Council and assigned Bill No. 6-544, which was referred to the Committee

of the Whole. The Bill was adopted on first and second readings on November 5, 1986, and November 18, 1986, respectively. Signed by the Mayor on December 10, 1986, it was assigned Act No. 6-246 and transmitted to both Houses of Congress for its review.

§ 7-1541.07. Construction.

Nothing in this subchapter and §§ 43-119 and 43-125 shall be construed so as to affect the authority vested in the Mayor by Reorganization Plan No. 5 of 1952. The performance of any function vested by this subchapter and §§ 43-119 and 43-125 in the Mayor or in any office or agency under the jurisdiction and control of said Mayor may be delegated by said Mayor in accordance with § 3 of such Plan.

(Sept. 10, 1962, 76 Stat. 537, Pub. L. 87-656, § 13.)

Prior Codifications. — 1981 Ed., § 2-1607. 1973 Ed., § 2-260.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners to

a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 7-1541.08. Authority of licensed blood banks to transfer blood components within District.

Recodified as § 7-1551.01.

(May 18, 1970, 84 Stat. 218, Pub. L. 91-256; May 10, 1989, D.C. Law 7-231, § 9, 36 DCR 492.)

Subchapter III-A. Transfer of Blood Components.

§ 7-1551.01. Authority of licensed blood banks to transfer blood components within District.

(a) Any blood bank in the District of Columbia, holding an unsuspended and unrevoked license issued under § 262 of Title 42, United States Code, may

transfer, for use in the District of Columbia, platelets and other components of blood in general use in the states (as determined by the Mayor of the District of Columbia), produced in such blood bank, to physicians licensed under Chapter 12 of Title 3, to District of Columbia hospitals, and to licensed private hospitals and other medical facilities in the District of Columbia.

(b) Section 262 of Title 42, United States Code, shall not apply with respect to any transfer made in accordance with subsection (a) of this section.

(May 18, 1970, 84 Stat. 218, Pub. L. 91-256; May 10, 1989, D.C. Law 7-231, § 9, 36 DCR 492.)

Prior Codifications. — 2001 Ed., § 7-1541.08.

1981 Ed., § 2-1608.

1973 Ed., § 2-261.

Legislative history of Law 7-231. — For legislative history of D.C. Law 7-231, see Historical and Statutory Notes following § 7-1541.03.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the Dis-

trict of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

Subchapter III-B. Blood Donations by Minors.

§ 7-1551.31. Minor blood donations.

Provided that the minor meets all the health requirements for blood donation, a minor 16 years of age may donate blood with the written consent of a parent or legal guardian and a minor 17 years of age or more may donate blood without consent of a parent or legal guardian.

(Mar. 8, 2011, D.C. Law 18-287, § 2, 57 DCR 11495.)

Legislative history of Law 18-287. — Law 18-287, the “Blood Donation Expansion Act of 2010”, was introduced in Council and assigned Bill No. 18-127, which was referred to the Committee on Health. The Bill was adopted on first and second readings on October 19, 2010,

and November 9, 2010, respectively. Signed by the Mayor on November 19, 2010, it was assigned Act No. 18-608 and transmitted to both Houses of Congress for its review. D.C. Law 18-287 became effective on March 8, 2011.

§ 7-1551.32. Rules.

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], shall issue rules to implement the provisions of this subchapter.

(Mar. 8, 2011, D.C. Law 18-287, § 3, 57 DCR 11495.)

Legislative history of Law 18-287. — For history of Law 18-287, see notes under § 7-1551.31.

Subchapter IV. Organ and Tissue Donor Registry.

§§ 7-1561.01 to 7-1561.06, Establishment of the organ and tissue donor registry; access to registry information; sources of registry information; Department of Motor Vehicles transfer of information requirements; donor status not dependent on being listed in registry; rulemaking.

Repealed.

(July 25, 2006, D.C. Law 16-146, § 2, 53 DCR 4407; Apr. 15, 2008, D.C. Law 17-145, § 30(f), 55 DCR 2532.)

Legislative history of Law 16-146. — Law 16-146, the “Organ and Tissue Donor Registry Establishment Act of 2006”, was introduced in Council and assigned Bill No. 16-421 which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on April 4, 2006, and May 2, 2006, respectively. Signed by the Mayor on May 19, 2006, it was assigned Act No. 16-381 and transmitted to both Houses of Congress for its review. D.C. Law 16-146 became effective on July 25, 2006.

Legislative history of Law 17-145. — Law 17-145, the “Uniform Anatomical Gift Revision Act of 2008”, was introduced in Council and assigned Bill No. 17-58 which was referred to the Committee on Public Safety and Judiciary. The Bill was adopted on first and second readings on January 8, 2008, and February 5, 2008, respectively. Signed by the Mayor on February 25, 2008, it was assigned Act No. 17-311 and transmitted to both Houses of Congress for its review. D.C. Law 17-145 became effective on April 15, 2008.

SUBTITLE G. AIDS HEALTH CARE.

CHAPTER 16. AIDS HEALTH CARE.

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Subchapter I. General.

§ 7-1601. Definitions.

For the purpose of this subchapter, the term:

(1) "AIDS" means acquired immune deficiency syndrome or any AIDS-related condition.

(2) "Council" means the Council of the District of Columbia.

(3) "Director" means the Director of the Department of Health, established by Reorganization Plan No. 4 of 1966, effective July 17, 1996.

(3A) "Domestic partnership" shall have the same meaning as provided in § 32-701(4).

(4) "Families" means persons who are related by blood, legal custody, marriage, domestic partnership, having a child in common, or who share or have shared for at least 1 year a mutual residence and who maintain or have maintained an intimate relationship rendering the application of this subchapter appropriate.

(5) "Mayor" means the Mayor of the District of Columbia.

(June 10, 1986, D.C. Law 6-121, § 2, 33 DCR 2451; Sept. 12, 2008, D.C. Law 17-231, § 18, 55 DCR 6758; Mar. 25, 2009, D.C. Law 17-353, § 130(a), 56 DCR 1117.)

Prior Codifications. — 1981 Ed., § 6-2801.

Effect of amendments. — D.C. Law 17-231 added par. (3A); and, in par. (4), substituted "marriage, domestic partnership," for "marriage,".

D.C. Law 17-353, in par. (3), substituted "Department of Health, established by Reorganization Plan No. 4 of 1966, effective July 17, 1996" for "Department of Human Services, es-

tablished by Reorganization Plan No. 2 of 1979, approved February 21, 1980".

Legislative history of Law 6-121. — Law 6-121, the "AIDS Health-Care Response Act of 1986," was introduced in Council and assigned Bill No. 6-306, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on March 11, 1986 and March 25, 1986, respectively. Signed

by the Mayor on April 15, 1986, it was assigned Act No. 6-156 and transmitted to both Houses of Congress for its review.

Legislative history of Law 17-231. — For Law 17-231, see notes following § 7-621.⁴

Legislative history of Law 17-353. — For Law 17-353, see notes following § 7-161.

§ 7-1602. Comprehensive AIDS Health-Care Response Plan.

(a) Within 6 months of December 30, 1985, the Mayor shall develop and present to the Council for its review and comment a comprehensive AIDS Health-Care Response Plan for the District of Columbia. The plan shall include, but not be limited to, the development of short-term and long-term goals and schemes for administrative coordination by District government agencies, educational programs, prevention methods and programs, a compilation of private sector services available to AIDS patients, medical research and information gathering, outpatient and inpatient health-care services delivery, social services delivery, exploration of the feasibility of establishing a separate compensation rate for District employees working in the health-care treatment facility or facilities contemplated in § 7-1603, housing, and identifying other general services needs.

(b) The Mayor shall update annually the comprehensive plan mandated by subsection (a) of this section.

(June 10, 1986, D.C. Law 6-121, § 3, 33 DCR 2451.)

Section references. — This section is referred to in §§ 7-1603 and 7-1604.

Prior Codifications. — 1981 Ed., § 6-2802.

Legislative history of Law 6-121. — For legislative history of D.C. Law 6-121, see Historical and Statutory Notes following § 7-1601.

Editor's notes. — Mayor authorized to make AIDS grants: Section 2 of D.C. Law 10-165 provided that the Mayor shall have the authority to make grants, with appropriated

funding, for HIV/AIDS related services pursuant to the regulations contained in Chapter 80 of Title 22 of the District of Columbia Municipal Regulations governing the administration of public health grants by the Department of Human Services.

Establishment and Appointments—Mayor's Advisory Committee on HIV/AIDS, see Mayor's Order 2003-31, March 12, 2003 (50 DCR 2386).

§ 7-1603. Residential health-care facility.

(a) In preparing the comprehensive plan mandated in § 7-1602, the Mayor shall investigate the need for a residential health-care facility or facilities which shall provide a program of medical, nursing, counseling, palliative, social, recreational, and supportive services to AIDS patients and their families.

(b) If, following an investigation, the Mayor identifies a need for a residential health-care facility or facilities in the District of Columbia, the Mayor shall establish the facility or facilities.

(c) In order to establish the facility or facilities, the Mayor may acquire, by purchase, rehabilitation, condemnation, rental, or otherwise, a building or buildings suitable for use as a residential health-care facility or facilities, including furniture, medical equipment, and other necessary accessories.

(d) The Mayor may enter into contractual arrangements with any agency or

organization qualified to provide the services enumerated in subsection (a) of this section.

(June 10, 1986, D.C. Law 6-121, § 4, 33 DCR 2451.)

Section references. — This section is referred to in § 7-1602.

Prior Codifications. — 1981 Ed., § 6-2803.

Legislative history of Law 6-121. — For legislative history of D.C. Law 6-121, see Historical and Statutory Notes following § 7-1601.

§ 7-1604. AIDS Program Coordination Office.

(a) The Mayor shall establish, within the Department of Health, an AIDS Program Coordination Office.

(b) The AIDS Program Coordination Office shall be supervised by the AIDS Program Coordination Officer who shall, at the direction of the Director of the Department of Health, be responsible for the coordination of and serving as the point of contact for the District of Columbia's comprehensive AIDS Health-Care Response Plan established by § 7-1602.

(c) The AIDS Program Coordination Officer shall:

(1) Analyze medical data, reports, and information to determine the effectiveness with which the AIDS program is meeting the needs of the residents of the District of Columbia;

(2) Coordinate and assist in the development of grant proposals to obtain funds from both the federal government and the private sector for AIDS and AIDS-related activities;

(3) Develop and coordinate, with other agencies of the District government, a program of health-care services delivery and other supportive services for persons with AIDS living at home;

(4) Disseminate information on AIDS to the public;

(5) Assist officials from the federal government, community groups, nursing homes, hospitals, and others in the coordination of AIDS plans, programs, and services delivery for persons with AIDS living in the District of Columbia;

(6) Serve as the liaison officer for the District's AIDS program to other District government agencies and monitor their compliance with the District's comprehensive AIDS program;

(7) Conduct community outreach and education programs; and

(8) Perform other duties appropriate to accomplish the objectives of this subchapter.

(June 10, 1986, D.C. Law 6-121, § 5, 33 DCR 2451; Mar. 2, 2007, D.C. Law 16-191, § 7, 53 DCR 6794; Mar. 25, 2009, D.C. Law 17-353, § 130(b), 56 DCR 1117.)

Prior Codifications. — 1981 Ed., § 6-2804.

Effect of amendments. — D.C. Law 16-191 substituted "Health" for "Human Services".

D.C. Law 17-353 validated a previously made technical correction in subsec. (a).

Legislative history of Law 6-121. — For

legislative history of D.C. Law 6-121, see Historical and Statutory Notes following § 7-1601.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 7-103.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 7-161.

§ 7-1605. Confidentiality of medical records and information.

Except as provided in paragraph (2) of this section, the Director shall use the records incident to a case of HIV infection or AIDS reported under this subchapter for statistical and public-health purposes only. Identifying information contained in these records shall be disclosed only when essential to safeguard the physical health of others. No person shall otherwise disclose identifying information derived from these records unless:

(1) The person about whom the record pertains gives his or her prior written permission; or

(2) A court finds, upon clear and convincing evidence, after having granted the person reported an opportunity to contest the disclosure, that disclosure:

(A) Is essential to safeguard the physical health of others; or

(B) Would provide evidence probative of guilt or innocence in a criminal prosecution.

(June 10, 1986, D.C. Law 6-121, § 6, 33 DCR 2451; Dec. 4, 2010, D.C. Law 18-273, § 206, 57 DCR 7171.)

Prior Codifications. — 1981 Ed., § 6-2805.

Effect of amendments. — D.C. Law 18-273 rewrote the section, which had read as follows: "The provisions of the Preventive Health Services Amendments Act of 1985 (D.C. Law 6-83), pertaining to the confidentiality of medical records and information on persons with AIDS, shall be applicable to this chapter."

Emergency legislation. — For temporary (90 day) amendment of section, see § 206 of Data-Sharing and Information Coordination Emergency Amendment Act of 2010 (D.C. Act 18-530, August 6, 2010, 57 DCR 8099).

For temporary (90 day) amendment of section, see § 206 of Data-Sharing and Informa-

tion Coordination Congressional Review Emergency Amendment Act of 2010 (D.C. Act 18-582, October 20, 2010, 57 DCR 10118).

Legislative history of Law 6-121. — For legislative history of D.C. Law 6-121, see Historical and Statutory Notes following § 7-1601.

Legislative history of Law 18-273. — For Law 18-273, see notes following § 7-131.

Delegation of Authority. — Delegation of authority pursuant to Law 6-121, see Mayor's Order 86-171, September 30, 1986.

Delegation of authority pursuant to D.C. Law 6-121, the "AIDS Health-Care Response Act of 1986", see Mayor's Order 2000-55, March 29, 2000 (47 DCR 4735).

§ 7-1606. Rules.

The Mayor may issue rules necessary to implement this subchapter pursuant to subchapter I of Chapter 5 of Title 2.

(June 10, 1986, D.C. Law 6-121, § 7, 33 DCR 2451.)

Prior Codifications. — 1981 Ed., § 6-2806.

Emergency legislation. — For temporary addition of chapter, see § 2-4 of the HIV Testing of Certain Criminal Offenders Emergency Act of 1992 (D.C. Act 9-318, November 24, 1992, 39 DCR 9016).

Legislative history of Law 6-121. — For legislative history of D.C. Law 6-121, see Historical and Statutory Notes following § 7-1601.

Subchapter II. Effi Slaughter Barry HIV/AIDS Initiative.

§ 7-1611. Findings.

The Council finds that:

(1) Effi Slaughter Barry, a former First Lady of the District of Columbia, was among the first public figures in the District to focus attention on the growing health problem of HIV/AIDS;

(2) Effi Slaughter Barry, a trained and experienced health professional, was a champion of HIV/AIDS prevention and wellness and was particularly concerned with the dearth of services East of the River;

(3) At the time of her death, September 6, 2007, Effi Slaughter Barry, was Director of Special Projects in the Office of the Director of the Department of Health, providing direct leadership to the East of the River HIV/AIDS Initiative; and

(4) In light of Effi Slaughter Barry's commitment to health and, in particular, to helping residents of the District of Columbia combat HIV/AIDS, it is fitting that the East of the River HIV/AIDS Capacity Building Initiative should be known as the Effi Slaughter Barry HIV/AIDS Initiative.

(Mar. 20, 2008, D.C. Law 17-117, § 2, 55 DCR 1282.)

Legislative history of Law 17-117. — Law 17-117, the "Effi Slaughter Barry HIV/AIDS Initiative Act of 2008", was introduced in Council and assigned Bill No. 17-372 which was referred to the Committee on Health. The Bill was adopted on first and second readings on

December 11, 2007, and January 8, 2008, respectively. Signed by the Mayor on January 23, 2008, it was assigned Act No. 17-260 and transmitted to both Houses of Congress for its review. D.C. Law 17-117 became effective on March 20, 2008.

§ 7-1612. Designation of the Effi Slaughter Barry HIV/AIDS Initiative.

The East of the River HIV/AIDS Capacity Building Initiative administered by the Department of Health shall be known as the Effi Slaughter Barry HIV/AIDS Initiative ("initiative").

(Mar. 20, 2008, D.C. Law 17-117, § 3, 55 DCR 1282.)

Legislative history of Law 17-117. — For Law 17-117, see notes following § 7-1611.

§ 7-1613. Purpose.

(a) The initiative shall provide technical and financial assistance to selected community HIV/AIDS service providers located east of the Anacostia river to support the:

(1) Implementation or expansion of HIV/AIDS prevention and support programs;

(2) Development of accurate performance measurement capabilities; and

(3) Promotion of revenue diversity.

(b) Assistance to selected community HIV/AIDS service providers shall be provided for up to 2 years.

(Mar. 20, 2008, D.C. Law 17-117, § 4, 55 DCR 1282; Mar. 3, 2010, D.C. Law 18-111, § 5021(a), 57 DCR 181.)

Effect of amendments. — D.C. Law 18-111 rewrote the section, which had read as follows: “The initiative shall provide technical and financial assistance to selected community HIV/AIDS service providers as part of a 2-year program designed to build operational capacities, improve HIV/AIDS service delivery, enable accurate performance measurement, and increase revenue diversity.”

Emergency legislation. — For temporary (90 day) amendment of section, see § 5021(a) of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 5021(a) of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 17-117. — For Law 17-117, see notes following § 7-1611.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 7-736.01.

Short title. — Short title: Section 5020 of D.C. Law 18-111 provided that subtitle C of title V of the act may be cited as the “Effi Slaughter Barry HIV/AIDS Initiative Amendment Act of 2009”.

§ 7-1614. Designation of an initiative coordinator.

The Director of the Department of Health shall designate an initiative coordinator, who shall be an employee of the Department of Health and qualified by experience and training to administer the initiative.

(Mar. 20, 2008, D.C. Law 17-117, § 5, 55 DCR 1282.)

Legislative history of Law 17-117. — For Law 17-117, see notes following § 7-1611.

§ 7-1615. Participant selection and grant award criteria.

(a) The Department of Health shall establish criteria for:

(1) The selection of community HIV/AIDS service providers to participate in the initiative; and

(2) Awarding grants to initiative participants, including a requirement that the fiduciary agent of any collaborative representing a ward must be located in the ward.

(b) All grants awarded pursuant to the initiative shall be subject to terms and conditions approved by the Department of Health.

(Mar. 20, 2008, D.C. Law 17-117, § 6, 55 DCR 1282; Mar. 3, 2010, D.C. Law 18-111, § 5021(b), 57 DCR 181.)

Effect of amendments. — D.C. Law 18-111 designated the existing text as subsec. (a); and added subsec. (b).

Emergency legislation. — For temporary (90 day) amendment of section, see § 5021(b) of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of sec-

tion, see § 5021(b) of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 17-117. — For Law 17-117, see notes following § 7-1611.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 7-736.01.

§ 7-1616. Allocation of funding.

The Department of Health shall distribute capacity building grants to initiative participants in an amount not to exceed the funds available in the Effi Slaughter Barry Initiative Fund, as established by § 7-1617.

(Mar. 20, 2008, D.C. Law 17-117, § 7, 55 DCR 1282; Mar. 3, 2010, D.C. Law 18-111, § 5021(c), 57 DCR 181.)

Effect of amendments. — D.C. Law 18-111 rewrote the section.

Emergency legislation. — For temporary (90 day) amendment of section, see § 5021(c) of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of sec-

tion, see § 5021(c) of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 17-117. — For Law 17-117, see notes following § 7-1611.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 7-736.01.

§ 7-1617. Effi Slaughter Barry Initiative Fund; establishment, purpose.

(a) There is established as a nonlapsing fund the Effi Slaughter Barry Initiative Fund ("Fund"), which shall be a segregated account within the General Fund of the District of Columbia and shall be used solely for the purpose of supporting the initiative.

(b) The Fund shall be administered by the Department of Health.

(c) The Mayor shall deposit into the Fund all general revenue funds appropriated in the budget submitted pursuant to § 1-204.46, and authorized by Congress for the purpose of the initiative.

(d) All funds deposited into the Fund, and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in this section without regard to fiscal year limitation, subject to authorization by Congress.

(e) The Director of the Department of Health may make grants from the Fund to effectuate the purpose of the initiative.

(Mar. 20, 2008, D.C. Law 17-117, § 7a, as added Aug. 16, 2008, D.C. Law 17-219, § 5029, 55 DCR 7598; Mar. 3, 2010, D.C. Law 18-111, § 5021(d), 57 DCR 181.)

Effect of amendments. — D.C. Law 18-111 added subsec. (e).

Emergency legislation. — For temporary (90 day) amendment of section, see § 5021(d) of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see § 5021(d) of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

Legislative history of Law 17-219. — For Law 17-219, see notes following § 7-651.17.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 7-736.01.

Short title. — Short title: Section 5028 of D.C. Law 17-219 provided that subtitle L of title V of the act may be cited as the "Effi Slaughter Barry HIV/AIDS Initiative Amendment Act of 2008".

Subchapter III. Senior HIV/AIDS Education and Outreach Program.

§ 7-1631. Definitions.

For the purposes of this subchapter, the term:

- (1) “AIDS” means acquired immune deficiency syndrome.
- (2) “Department” means the Department of Health.
- (3) “HIV” means the human immunodeficiency virus.
- (4) “Program” means the Senior HIV/AIDS Education and Outreach Program established by § 7-1632.
- (5) “Senior” means an individual 50 years of age or older.

(July 13, 2012, D.C. Law 19-152, § 2, 59 DCR 5136.)

Legislative history of Law 19-152. — Law 19-152, the “Senior HIV/AIDS Education and Outreach Program Establishment Act of 2012”, was introduced in Council and assigned Bill No. 19-524, which was referred to the Committee on Health. The Bill was adopted on first and

second readings on April 17, 2012, and May 1, 2012, respectively. Signed by the Mayor on May 11, 2012, it was assigned Act No. 19-358 and transmitted to both Houses of Congress for its review. D.C. Law 19-152 became effective on July 13, 2012.

§ 7-1632. Senior HIV/AIDS Education and Outreach Program establishment.

There is established within the Department the Senior HIV/AIDS Education and Outreach Program, which shall train seniors to provide information to other seniors on how to prevent the transmission of HIV and to engage in education and outreach on issues related to HIV and AIDS with community-based providers that serve seniors in the District.

(July 13, 2012, D.C. Law 19-152, § 3, 59 DCR 5136.)

Legislative history of Law 19-152. — For history of Law 19-152, see notes under § 7-1631.

§ 7-1633. Program administration.

- (a) The Department shall:
 - (1) Administer the Program;
 - (2) Recruit seniors to participate in the Program;
 - (3) Determine the training curriculum; and
 - (4) Schedule no fewer than 8 education or community-outreach events annually, which shall be led by seniors who have successfully completed the Program. Each year, at least one event shall be held in each ward.
- (b) The Department may contract with a community provider to train the seniors participating in the Program.
- (c) Subject to the availability of funds, the Department may provide a stipend to Program participants.

(July 13, 2012, D.C. Law 19-152, § 4, 59 DCR 5136.)

Legislative history of Law 19-152. — For history of Law 19-152, see notes under § 7-1631.

SUBTITLE G-I. VACCINATIONS AND IMMUNIZATIONS.

CHAPTER 16A. HUMAN PAPILLOMAVIRUS VACCINATION.

Sec.

7-1651.01. Definitions.

7-1651.02. Human papillomavirus public education campaign.

7-1651.03. Department of Health certification.

Sec.

7-1651.04. Human papillomavirus vaccination program.

7-1651.05. Rules.

§ 7-1651.01. Definitions.

For the purposes of this chapter, the term:

- (1) "CDC" means the Centers for Disease Control and Prevention.
- (2) "HPV" means the human papillomavirus.

(July 12, 2007, D.C. Law 17-10, § 2, 54 DCR 5146.)

Legislative history of Law 17-10. — Law 17-10, the "Human Papillomavirus Vaccination and Reporting Act of 2007", was introduced in Council and assigned Bill No. 17-30 which was referred to the Committee on Health. The Bill was adopted on first and second readings on

April 3, 2007, and April 19, 2007, respectively. Signed by the Mayor on May 4, 2007, it was assigned Act No. 17-39 and transmitted to both Houses of Congress for its review. D.C. Law 17-10 became effective on July 12, 2007.

§ 7-1651.02. Human papillomavirus public education campaign.

By January 1, 2008, the Mayor shall initiate a public information campaign, including multiple HPV vaccine education forums in each ward, aimed at educating the public on:

- (1) The connection between HPV and cervical cancer;
 - (2) The importance of protecting oneself against HPV infection;
 - (3) The value of screening for cervical cancer through regular pap tests;
- and
- (4) The effectiveness and risks of the HPV vaccine.

(July 12, 2007, D.C. Law 17-10, § 3, 54 DCR 5146.)

Legislative history of Law 17-10. — For Law 17-10, see notes following § 7-1651.01.

§ 7-1651.03. Department of Health certification.

Within 30 days of the implementation of the HPV vaccination program, the Director of the Department of Health shall provide written certification to the Council that the vaccine is safe and efficacious.

(July 12, 2007, D.C. Law 17-10, § 4, 54 DCR 5146.)

Legislative history of Law 17-10. — For Law 17-10, see notes following § 7-1651.01.

§ 7-1651.04. Human papillomavirus vaccination program.

(a) The Mayor shall:

(1) By January 1, 2009, consistent with the standards set forth by the federal Centers for Disease Control and Prevention ("CDC"), establish and implement a HPV vaccination program that includes a requirement that the Department of Health disseminate to all parents or legal guardians information about HPV, including the benefits and risks of the HPV vaccine;

(2) Require all communications from the Department of Health on the HPV vaccination program to prominently feature information pertaining to the ability of parents or guardians to opt out of the program;

(3) Extend, by rulemaking, the HPV vaccination program requirements to males, consistent with standards set forth by the CDC; and

(4) Require the Department of Health to develop reporting requirements for the collection and analyzation of HPV vaccination data.

(b)(1) By the beginning of the 2009 school year, and of every school year thereafter, the parent or legal guardian of a female child enrolling in grade 6 for the first time at a school in the District of Columbia shall be required to submit certification:

(A) That the child has received the HPV vaccine; or

(B) That the child has not received the HPV vaccine because:

(i) The parent or legal guardian has objected in good faith and in writing to the chief official of the school that the vaccination would violate his or her religious beliefs;

(ii) The child's private physician, his or her representative, or the public health authority has provided the school written certification that the vaccination is medically inadvisable; or

(iii) The parent or legal guardian, in his or her discretion, has elected to opt out of the HPV vaccination program, for any reason, by signing a form prepared by the Department of Health that states the parent or legal guardian has been informed of the HPV vaccination requirement and has elected not to participate.

(2) The form, provided pursuant to paragraph (1)(B)(iii) of this subsection, shall include the parent or legal guardian's name, address, and telephone number and the name of the child. The form shall be available in English, Spanish, and any other language that the Mayor considers culturally appropriate.

(July 12, 2007, D.C. Law 17-10, § 5, 54 DCR 5146.)

Legislative history of Law 17-10. — For Law 17-10, see notes following § 7-1651.01.

§ 7-1651.05. Rules.

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, shall issue rules to implement the provisions of this chapter.

(July 12, 2007, D.C. Law 17-10, § 6, 54 DCR 5146.)

Legislative history of Law 17-10. — For Law 17-10, see notes following § 7-1651.01.

§ 7-1651.06. Applicability.

This chapter shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan.

(July 12, 2007, D.C. Law 17-10, § 7, 54 DCR 5146.)

Legislative history of Law 17-10. — For Law 17-10, see notes following § 7-1651.01.

SUBTITLE G-II. USE OF MARIJUANA FOR MEDICAL TREATMENT.

CHAPTER 16B. USE OF MARIJUANA FOR MEDICAL TREATMENT.

| | |
|--|--|
| Sec. | Sec. |
| 7-1671.01. Definitions. | cal marijuana physician recommendations. |
| 7-1671.02. Use of medical marijuana. | 7-1671.08. Penalties. |
| 7-1671.03. Restrictions on use of medical marijuana. | 7-1671.09. Medical Marijuana Advisory Committee. |
| 7-1671.04. Recommending physician; protections. | 7-1671.10. Fees. |
| 7-1671.05. Medical marijuana program. | 7-1671.11. Liability. |
| 7-1671.06. Dispensaries and cultivation centers. | 7-1671.12. Public and private insurance. |
| 7-1671.07. Board of Medicine review of medi- | 7-1671.13. Rules. |

§ 7-1671.01. Definitions.

For the purposes of this chapter, the term:

(1) “Administer” or “administration” means the direct introduction of medical marijuana, whether by inhalation, ingestion, or any other means, into the body of a person.

(2) “Bona fide physician-patient relationship” means a relationship between a physician and patient in which the physician:

(A) Has completed a full assessment of the patient’s medical history and current medical condition, including a personal physical examination; and

(B) Has responsibility for the ongoing care and treatment of the patient.

(3) “Caregiver” means a person who:

(A) Is designated by a qualifying patient as the person authorized, on the qualifying patient’s behalf, to possess, obtain from a dispensary, dispense, and assist in the administration of medical marijuana;

(B) Is registered with the Department as the qualifying patient’s caregiver;

(C) Is not currently serving as the caregiver for another qualifying patient; and

(D) Is at least 18 years of age.

(4) “Controlled Substances Act” means Unit A of Chapter 9 of Title 48 [§ 48-901.02 et seq.].

(5) “Cultivation center” means a facility operated by an organization or business registered with the Mayor pursuant to § 7-1671.05 from or at which medical marijuana is cultivated, possessed, manufactured, and distributed in the form of medical marijuana, and paraphernalia is possessed and distributed to dispensaries.

(6) “Department” means the Department of Health.

(7) “Dispensary” means a facility operated by an organization or business registered with the Mayor pursuant to § 7-1671.05 from or at which medical marijuana is possessed and dispensed and paraphernalia is possessed and distributed to a qualifying patient or a caregiver.

(8) “Dispense” means to distribute medical marijuana to a qualifying

patient or caregiver pursuant to this chapter and the rules issued pursuant to § 7-1671.13.

(9) "Distribute" means the actual, constructive, or attempted transfer from one person to another.

(10) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of marijuana, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or re-labeling of its container.

(11) "Marijuana" shall have the same meaning as provided in § 48-901.02(3)(A).

(12) "Medical marijuana" means marijuana cultivated, manufactured, possessed, distributed, dispensed, obtained, or administered in accordance with this chapter and the rules issued pursuant to § 7-1671.13.

(13) "Minor" means any person under 18 years of age, but does not include an emancipated minor.

(14) "Paraphernalia" means:

(A) Objects used, intended for use, or designed for use in preparing, storing, ingesting, inhaling, or otherwise introducing medical marijuana into the human body; and

(B) Kits, objects, devices, or equipment used, intended for use, or designed for use in planting, propagating, manufacturing, cultivating, growing, harvesting, processing, or preparing medical marijuana.

(15) "Physician" means an individual who is licensed and in good standing to practice medicine or osteopathy under District law.

(16) "Program" means the medical marijuana program established by § 7-1671.05.

(17) "Qualifying medical condition" means:

(A) Human immunodeficiency virus;

(B) Acquired immune deficiency syndrome;

(C) Glaucoma;

(D) Conditions characterized by severe and persistent muscle spasms, such as multiple sclerosis;

(E) Cancer; or

(F) Any other condition, as determined by rulemaking, that is:

(i) Chronic or long-lasting;

(ii) Debilitating or interferes with the basic functions of life; and

(iii) A serious medical condition for which the use of medical marijuana is beneficial:

(I) That cannot be effectively treated by any ordinary medical or surgical measure; or

(II) For which there is scientific evidence that the use of medical marijuana is likely to be significantly less addictive than the ordinary medical treatment for that condition.

(18) "Qualifying medical treatment" means:

(A) Chemotherapy;

(B) The use of azidothymidine or protease inhibitors;

(C) Radiotherapy; or

(D) Any other treatment, as determined by rulemaking, whose side effects require treatment through the administration of medical marijuana in the same manner as a qualifying medical condition.

(19) "Qualifying patient" means a resident of the District who has a qualifying medical condition or is undergoing a qualifying medical treatment.

(20) "Residence" means a dwelling or dwelling unit in which a person lives in a particular locality with the intent to make it a fixed and permanent home.

(Feb. 25, 2010, D.C. Law 13-315, § 2, as added July 27, 2010, D.C. Law 18-210, § 2, 57 DCR 4798.)

Temporary Addition of Section. — Section 2 of D.C. Law 18-152 added a section to read as follows:

"Sec. 11a. Applicability. This act shall apply upon the effective date of the Legalization of Marijuana for Medical Treatment Initiative Amendment Act of 2010, as introduced on January 19, 2010 (D.C. Bill 18-622)."

Section 4(b) of D.C. Law 18-152 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition, see § 2 of Legalization of Marijuana for Medical Treatment Initiative Applicability Emergency Amendment Act of 2009 (D.C. Act 18-323, March 1, 2010, 57 DCR 1849).

Legislative history of Law 18-210. — Law 18-210, the "Legalization of Marijuana for Medical Treatment Amendment Act of 2010", was introduced in Council and assigned Bill No. 18-622, which was referred to the Committee on Health and the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on April 20, 2010, and May 4, 2010, respectively. Signed by the Mayor on May 21, 2010, it was assigned Act No. 18-429 and transmitted to both Houses of Congress for its review. D.C. Law 18-210 became effective on July 27, 2010.

Mayor's Orders. — Establishment of Medical Marijuana Program Pursuant to the Legalization of Marijuana for Medical Treatment Initiative of 1999, see Mayor's Order 2011-71, April 13, 2011 (58 DCR 3527).

Editor's notes. — History of D.C. Law 13-315.

Initiative 59, permitting the use of marijuana for medical treatment, was certified as a proper subject for an initiative by the District of Columbia Board of Elections and Ethics on September 17, 1998. In reaction to the certification, Congress enacted and the President signed the "Barr Amendment" that prohibited the use of appropriated funds to conduct any ballot initiative which sought to legalize or otherwise reduce penalties associated with a controlled sub-

stance. Since, the ballots for the November 3 election had already been printed before enactment of the Barr Amendment, District voters still considered the initiative.

After the vote, the Board of Elections and Ethics refused, in light of the Barr Amendment, to release and certify the results of the vote on Initiative 59. Certain District of Columbia voters then sued the Board.

In *Turner v. District of Columbia Board of Elections and Ethics*, 77 F.Supp.2d 25 (D.D.C. 1999), the court ruled that the Board could count and certify the election results concerning Initiative 59. After the count, the Board announced that Initiative 59 had been approved by the voters and certified the results. The initiative was eventually assigned D.C. Act 13-138.

On October 20, 1999, the District of Columbia Chief Financial Officer ("CFO") submitted a fiscal impact statement that found that implementation of Act 13-138 would have a fiscal impact and recommended that the cost be included in the development of the fiscal year 2001 budget.

On October 25, 1999, the District of Columbia Council transmitted D.C. Act 13-138 to the District of Columbia Financial Responsibility and Management Assistance Authority ("Control Board").

On October 26, 1999, the Control Board informed the Council that it would not accept D.C. Act 13-138 without a revised fiscal impact statement from the CFO.

On September 30, 2001, the Control Board suspended its activities.

Between 1998 and 2009 all District of Columbia appropriations acts contained language that prevented Initiative 59 from taking effect as law. Congress did not include the language in the District of Columbia Appropriations Act, 2010 (Pub. L. 111-117).

With the removal of the "Bar Amendment", the Council transmitted Act 13-138 to Congress on December 21, 2009, for a 30-day period of review.

Act 13-138 became D.C. Law 13-315 on February 25, 2010, and is published at 57 DCR

3360. D.C. Law 18-210 amended Law 13-315 in its entirety "to read as follows."

CASE NOTES

ANALYSIS

Certification.
In general.

Certification.

Phrase "conduct any ballot initiative" in the Barr Amendment, which precluded use of funds appropriated for the District of Columbia in 1998 to conduct election day activities related to referendum on medical marijuana initiative, did not prevent the District of Columbia board of elections and ethics from counting, releasing, and certifying the vote on the initiative; if Barr Amendment precluded counting, releasing, and certifying the results of votes properly cast in a proper referendum, it would burden core political speech and would not be sufficiently narrowly tailored to meet the government's interest in criminalizing drug possession or use. U.S. Const. Amend. 1; Omnibus Consolidated and Emergency Supplemental Appropriations

Act, 1999, § 171, 112 Stat. 2681. *Turner v. District of Columbia Bd. of Elections & Ethics*, 77 F.Supp.2d 25, 1999 U.S. Dist. LEXIS 16595 (1999).

In general.

Statute denying the District of Columbia authority to "enact any law" reducing penalties associated with possession, use or distribution of marijuana, and removing legislation with that effect from limited right of self-governance granted to the District of Columbia by the Home Rule Act, did not unconstitutionally interfere with First Amendment rights of District of Columbia citizens, by preventing them from using ballot initiative process to enact medical marijuana legislation; statute did not restrict free speech rights of medical marijuana advocates, but only shifted forum of debate from District of Columbia to Congress. *Marijuana Policy Project v. United States*, 304 F.3d 82, 2002 U.S. App. LEXIS 20863 (C.A.D.C. 2002).

§ 7-1671.02. Use of medical marijuana.

(a) Notwithstanding any other District law, a qualifying patient may possess and administer medical marijuana, and possess and use paraphernalia, in accordance with this chapter and the rules issued pursuant to § 7-1671.13.

(b) Notwithstanding any other District law, a caregiver may possess and dispense medical marijuana to a qualifying patient, and possess and use paraphernalia, for the sole purpose of assisting in the administration of medical marijuana to a qualifying patient in accordance with this chapter and the rules issued pursuant to § 7-1671.13.

(c) A qualifying patient may possess and administer medical marijuana, and possess and use paraphernalia, only for treatment of a qualifying medical condition or the side effects of a qualifying medical treatment and only after having:

(1) Obtained a signed, written recommendation from a physician in accordance with § 7-1671.04; and

(2) Registered with the Mayor pursuant to § 7-1671.05.

(d) A qualifying patient or caregiver shall only possess, administer, or dispense medical marijuana, or possess or use paraphernalia, obtained from a dispensary registered with the Mayor pursuant to § 7-1671.05.

(e) A qualifying patient who is a minor may possess and administer medical marijuana only if the parent or legal guardian of the minor has signed a written statement affirming that the parent or legal guardian:

(1) Understands the qualifying medical condition or qualifying medical treatment of the minor;

(2) Understands the potential benefits and potential adverse effects of the use of medical marijuana, generally, and, specifically, in the case of the minor;

(3) Consents to the use of medical marijuana for the treatment of the minor's qualifying medical condition or treatment of the side effects of the minor's qualifying medical treatment; and

(4) Consents to, or designates another adult to, serve as the caregiver for the qualifying patient and the caregiver controls the acquisition, possession, dosage, and frequency of use of medical marijuana by the qualifying patient.

(Feb. 25, 2010, D.C. Law 13-315, § 3, as added July 27, 2010, D.C. Law 18-210, § 2, 57 DCR 4798.)

Legislative history of Law 18-210. — For Law 18-210, see notes following § 7-1671.01.

§ 7-1671.03. Restrictions on use of medical marijuana.

(a) The maximum amount of medical marijuana that any qualifying patient or caregiver may possess at any moment is 2 ounces of dried medical marijuana; provided, that the Mayor, through rulemaking, may increase the quantity of dried medical marijuana that may be possessed up to 4 ounces; and shall promulgate through rulemaking limits on medical marijuana of a form, other than dried.

(b)(1) Medical marijuana shall not be administered by or to a qualifying patient anywhere other than the qualifying patient's residence, if permitted, or at a medical treatment facility when receiving medical care for a qualifying medical condition, if permitted by the facility.

(2) A qualifying patient or caregiver shall not administer medical marijuana at a dispensary or cultivation center.

(3) Notwithstanding paragraph (1) of this subsection, a qualifying patient shall not use medical marijuana if exposure to the medical marijuana or the medical marijuana smoke would adversely affect the health, safety, or welfare of a minor.

(c) A qualifying patient or caregiver shall transport medical marijuana in a labeled container or sealed package in a manner and method established by rulemaking.

(d) Nothing in this chapter permits a person to:

(1) Undertake any task under the influence of medical marijuana when doing so would constitute negligence or professional malpractice; or

(2) Operate, navigate, or be in actual physical control of any motor vehicle, aircraft, or motorboat while under the influence of medical marijuana.

(e) The use of medical marijuana as authorized by this chapter and the rules issued pursuant to § 7-1671.13 does not create a defense to any crime and does not negate the mens rea element for any crime except to the extent of the voluntary-intoxication defense recognized in District of Columbia law.

(f) Notwithstanding any other law, a person or entity may provide information about the existence or operations of a cultivation center or dispensary to another person pursuant to this law.

(g) A qualified patient, caregiver, or an employee of a cultivation center or a

dispensary who is stopped by the police upon reasonable suspicion or probable cause that the stopped individual is in possession of marijuana may not be further detained or arrested on this basis alone if the police determine that he or she is in compliance with this chapter and the rules issued pursuant to § 7-1671.13.

(Feb. 25, 2010, D.C. Law 13-315, § 4, as added July 27, 2010, D.C. Law 18-210, § 2, 57 DCR 4798.)

Legislative history of Law 18-210. — For Law 18-210, see notes following § 7-1671.01.

§ 7-1671.04. Recommending physician; protections.

(a) A physician may recommend the use of medical marijuana to a qualifying patient if the physician:

- (1) Is in a bona fide physician-patient relationship with the qualifying patient; and
- (2) Makes the recommendation based upon the physician's assessment of the qualifying patient's medical history, current medical condition, and a review of other approved medications and treatments that might provide the qualifying patient with relief from a qualifying medical condition or the side effects of a qualifying medical treatment.

(b)(1) A physician's recommendation that a qualifying patient may use medical marijuana shall be signed by the physician and include:

- (A) The physician's medical license number; and
- (B) A statement that the use of medical marijuana is necessary for the treatment of a qualifying medical condition or the side effects of a qualifying medical treatment.

(2) A physician's recommendation shall be valid only if it is written on a form prescribed by the Mayor.

(c) Except as provided in § 7-1671.07, a physician shall not be subject to any penalty, including arrest, prosecution, or disciplinary proceeding, or denial of any right or privilege, for advising a qualifying patient about the use of medical marijuana or recommending the use of medical marijuana to a qualifying patient pursuant to this chapter and the rules issued pursuant to § 7-1671.13.

(d) A physician recommending the use of medical marijuana by a qualifying patient shall not have a professional office located at a dispensary or cultivation center or receive financial compensation from a dispensary or cultivation center, or a director, officer, member, incorporator, agent, or employee of a dispensary or cultivation center.

(Feb. 25, 2010, D.C. Law 13-315, § 5, as added July 27, 2010, D.C. Law 18-210, § 2, 57 DCR 4798.)

Legislative history of Law 18-210. — For Law 18-210, see notes following § 7-1671.01.

§ 7-1671.05. Medical marijuana program.

There is established a medical marijuana program, which shall regulate the manufacture, cultivation, distribution, dispensing, purchase, delivery, sale, possession, and administration of medical marijuana and the manufacture, possession, purchase, sale, and use of paraphernalia. The Program shall be administered by the Mayor and shall:

(1)(A) Require the registration with the Department of all:

- (i) Qualifying patients; and
- (ii) Caregivers; and

(B) As part of the registration process, require a qualifying patient to:

(i) Designate the dispensary from which the qualifying patient will receive medical marijuana; provided, that the qualifying patient may change the designation with 14 days written notice to the Department; and

(ii) Provide a copy of the physician's recommendation for the qualifying patient's use of medical marijuana;

(2) Require the registration of all:

- (A) Dispensaries;
- (B) Cultivation centers; and
- (C) Directors, officers, members, incorporators, agents, and employees of dispensaries and cultivation centers;

(3) Issue nontransferable registration identification cards that expire annually to registered persons and entities, which may be presented to and used by law enforcement to confirm whether a person or entity is authorized to administer, cultivate, dispense, distribute, or possess medical marijuana, or manufacture, possess, or distribute paraphernalia;

(4) Require all dispensaries and cultivation centers to:

(A) Maintain true, complete, and current records of the following:

(i) The name, address, home telephone number, and date of birth of each employee;

(ii) A record of each transaction, including:

- (I) The quantity of medical marijuana distributed or dispensed;
- (II) The consideration given for the medical marijuana; and
- (III) The recipient of the medical marijuana;

(iii) The quantity of medical marijuana at the dispensary or cultivation center;

(iv) The disposal method used for any medical marijuana that was cultivated or acquired but not sold, including evidence of the disposal of the medical marijuana; and

(v) Any other information required by the Mayor;

(B) Notify the Chief of the Metropolitan Police Department in writing and immediately of the loss, theft, or destruction of any medical marijuana;

(5) Require all dispensaries to maintain true, complete, and current records of:

(A) The name and address of the qualifying patient authorized to obtain the distribution or dispensing of medical marijuana; and

(B) The name and address of the caregiver who receives the medical marijuana;

(6) Develop educational materials about potential harmful drug interactions that could occur from using medical marijuana concurrently with other medical treatments and the importance of informing health care providers and pharmacists of the use of medical marijuana to help avoid harmful drug interactions;

(7) Revoke or suspend the registration of any person or entity if the Mayor determines that the person or entity has violated a provision of this chapter or the rules issued pursuant to § 7-1671.13;

(8) Conduct announced and unannounced inspections of dispensaries and cultivation centers;

(9) Establish sliding-scale registration and annual renewal fees for all persons and entities required to register pursuant to this chapter; provided, that the registration and annual renewal fees for dispensaries and cultivation centers and for the directors, officers, members, incorporators, agents, and employees of dispensaries and cultivation centers shall be sufficient to offset the costs of administering this chapter;

(10) Establish a system to provide for the safe and affordable dispensing of medical marijuana to qualifying patients who are unable to afford a sufficient supply of medical marijuana based upon the qualifying patient's income and existing financial resources that:

(A) Allows qualifying patients to apply to the Mayor to be eligible to purchase medical marijuana on a sliding scale from dispensaries; and

(B) Requires each dispensary to devote a percentage of its gross revenue, as determined by the Mayor, to providing medical marijuana on the sliding scale to qualifying patients determined eligible pursuant to subparagraph (A) of this paragraph;

(11) Submit to the Council an annual report that does not disclose any identifying information about qualifying patients, caregivers, or physicians, but that includes:

(A) The number of applications filed for a registration identification card;

(B) The number of qualifying patients and caregivers registered;

(C) The qualifying medical condition or qualifying medical treatment for each qualifying patient;

(D) The number of registration identification cards suspended and the number revoked; and

(E) The number of physicians providing written recommendations for qualifying patients;

(12) Establish standards by which applicants for dispensary and cultivation center registration will be evaluated to determine which applicants will be accepted for registration and renewal of registration, which shall include the following factors:

(A) Knowledge of District and federal law relating to marijuana;

(B) Suitability of the proposed facility;

(C) A proposed staffing plan;

(D) A security plan that has been assessed by the Metropolitan Police Department;

(E) A cultivation plan; and

(F) A product safety and labeling plan;

(13)(A) Provide notice through the mail to all Advisory Neighborhood Commissions in the affected ward at least 30 days prior to approval of a location for a dispensary or cultivation center; and

(B) Accord great weight to input provided by the Advisory Neighborhood Commission regarding the proposed location of a dispensary or cultivation center when approving or rejecting an application for registration; and

(14) Require caregivers and qualifying patients to notify the Department immediately and in writing of the loss, theft, or destruction of a registration identification card.

(Feb. 25, 2010, D.C. Law 13-315, § 6, as added July 27, 2010, D.C. Law 18-210, § 2, 57 DCR 4798.)

Legislative history of Law 18-210. — For Law 18-210, see notes following § 7-1671.01.

Delegation of Authority. — Establishment

of Medical Marijuana Program and Delegation of Authority, see Mayor's Order 2010-138, August 6, 2010 (57 DCR 7110).

§ 7-1671.06. Dispensaries and cultivation centers.

(a) Notwithstanding any other District law, a dispensary may possess medical marijuana for the purpose of dispensing the medical marijuana to a qualifying patient or caregiver and may manufacture, purchase, possess, distribute, and use paraphernalia, in accordance with this chapter and the rules issued pursuant to § 7-1671.13.

(b) Notwithstanding any other District law, a cultivation center may cultivate and possess medical marijuana for the purpose of distribution to a dispensary and may manufacture, purchase, possess, and use paraphernalia in accordance with this chapter and the rules issued pursuant to § 7-1671.13.

(c) A dispensary may dispense medical marijuana and distribute paraphernalia to a qualifying patient or the qualifying patient's caregiver, and a qualifying patient or the qualifying patient's caregiver may obtain medical marijuana and paraphernalia from a dispensary, only if the qualifying patient is registered to receive medical marijuana from that dispensary.

(d)(1) Each dispensary and cultivation center shall be registered with the Mayor prior to manufacturing, cultivating, dispensing, possessing, or distributing medical marijuana, or manufacturing, possessing, using, or distributing paraphernalia.

(2) No more than 5 dispensaries shall be registered to operate in the District; provided, that the Mayor may increase the number to as many as 8 by rulemaking to ensure that qualifying patients have adequate access to medical marijuana.

(3) The number of cultivation centers that may be registered to operate in the District shall be determined by rulemaking.

(e)(1) A dispensary may not dispense more than 2 ounces of medical marijuana in a 30-day period to a qualifying patient, either directly or through the qualifying patient's caregiver; provided, that the Mayor, through

rulemaking, may increase the quantity of medical marijuana that may be dispensed to up to 4 ounces.

(2) A cultivation center shall not possess more than 95 living marijuana plants at any time.

(3) It shall be unlawful for a dispensary to dispense or possess more than the quantity of medical marijuana needed to support the number of qualifying patients or caregivers registered to receive medical marijuana at that dispensary, as determined by the Mayor pursuant to rules issued under § 7-1671.13; provided, that the Mayor may allow a dispensary to possess a higher quantity of medical marijuana in anticipation of additional qualifying patients or caregivers registering.

(f) No marijuana or paraphernalia at a dispensary or a cultivation center shall be visible from any public or other property.

(g) A dispensary or cultivation center shall not locate within any residential district or within 300 feet of a preschool, primary or secondary school, or recreation center.

(h) Each dispensary and cultivation center shall:

(1) Be either a for-profit or nonprofit corporation incorporated within the District;

(2) Implement a security plan to prevent the theft or diversion of medical marijuana, including maintaining all medical marijuana in a secure, locked room that is accessible only by authorized persons; and

(3) Ensure that all of its employees receive training on compliance with District law, medical marijuana use, security, and theft prevention.

(i) Each dispensary shall regularly distribute to all qualifying patients and caregivers the educational materials regarding potential harmful drug interactions developed as part of the Program.

(j) No director, officer, member, incorporator, agent, or employee of a dispensary or cultivation center who has access to the medical marijuana at the dispensary or cultivation center shall have:

(1) A felony conviction; or

(2) A misdemeanor conviction for a drug-related offense.

(k) A person found to have violated any provision in this chapter shall not be a director, officer, member, incorporator, agent, or employee of a dispensary or cultivation center, and the registration identification card of the person shall be immediately revoked and the registration of the dispensary or cultivation center shall be suspended until the person is no longer a director, officer, member, incorporator, agent, or employee of the dispensary or cultivation center.

(Feb. 25, 2010, D.C. Law 13-315, § 7, as added July 27, 2010, D.C. Law 18-210, § 2, 57 DCR 4798.)

Temporary Amendment of Section. — Section 2 of D.C. Law 19-122 amended subsecs. (d)(2) and (3) and added subsec. (d)(4) to read as follows:

“(2)(A) No more than 5 dispensaries shall be registered to operate in the District; provided,

that the Mayor may increase the number to as many as 8 by rulemaking to ensure that qualifying patients have adequate access to medical marijuana; provided further, that no more than 2 dispensaries shall be registered to operate within an election ward established by the

Council in section 4 of the Redistricting Procedure Act of 1981, effective March 16, 1982 (D.C. Law 4-87; D.C. Official Code § 1-1041.03).

“(B) The prohibition of no more than 2 dispensaries being registered to operate within a ward set forth in subparagraph (A) of this paragraph shall apply to applications pending as of the effective date of the Medical Marijuana Cultivation Center and Dispensary Locations Emergency Amendment Act of 2012, effective January 31, 2012 (D.C. Act 19-299; 59 DCR III), (‘Emergency Act’).

“(3)(A) The number of cultivation centers that may be registered to operate in the District shall be determined by rulemaking; provided, that no more than 6 cultivation centers shall be registered to operate within an election ward established by the Council in section 4 of the Redistricting Procedure Act of 1981, effective March 16, 1982 (D.C. Law 4-87; D.C. Official Code § 1-1041.03).

“(B) The prohibition of no more than 6 cultivation centers being registered to operate within a ward set forth in subparagraph (A) of this paragraph shall apply to applications pending as of the effective date of the Emergency Act.

“(4)(A) No more than one dispensary may be registered to operate in any ward in which 5 cultivation centers have been registered to operate.

“(B) The prohibition of no more than one dispensary being registered to operate within a ward in which 5 cultivation centers have been registered to operate set forth in subparagraph (A) of this paragraph shall apply to applications pending as of the effective date of the Emergency Act.”.

Section 4(b) of D.C. Law 19-122 provided that the act shall expire after 225 days of its having taken effect.

Section 2 of D.C. Law 19-146 added subsec. (g-1) to read as follows:

“(g-1)(1) A cultivation center shall not be located within a Retail Priority Area, as designated pursuant to section 4 of the Retail Incentive Act of 2004, effective September 8, 2004 (D.C. Law 15-185; D.C. Official Code § 2-1217.73), and as approved by the Council pursuant to the Great Streets Neighborhood Retail Priority Areas Approval Resolution of 2007, effective July 10, 2007 (Res. 17-025; 54 DCR 7194).

“(2) Any applicant with a pending application for a registration to operate a cultivation center within a Retail Priority Area as identified in paragraph (1) of this subsection shall be allowed to modify the application within 180 days of the effective date of the Medical Marijuana Cultivation Center Emergency Amendment Act of 2012, effective April 7, 2012 (D.C. Act 19-339; 59 DCR _____), without negatively affecting the current status of the application.”(3) The prohibition set forth in paragraph (1) of this subsection shall apply only to applications pending as of the effective date of the Medical Marijuana Cultivation Center Emergency Amendment Act of 2012, effective April 7, 2012 (D.C. Act 19-339; 59 DCR _____).

Section 4(b) of D.C. Law 19-146 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2 of Medical Marijuana Cultivation Center and Dispensary Locations Emergency Amendment Act of 2012 (D.C. Act 19-299, January 31, 2012, 59 DCR 902).

For temporary (90 day) amendment of section, see § 2 of Medical Marijuana Cultivation Center Emergency Amendment Act of 2012 (D.C. Act 19-339, April 7, 2012, 59 DCR 2784).

Legislative history of Law 18-210. — For Law 18-210, see notes following § 7-1671.01.

§ 7-1671.07. Board of Medicine review of medical marijuana physician recommendations.

(a) The Board of Medicine shall have the authority to review and audit the written physician recommendations submitted to the Department as part of the registration process and shall have the authority to discipline physicians who act outside of the scope of this chapter.

(b) The Board of Medicine shall audit the recommendations submitted by any physician who provides more than 250 recommendations in any 12-month period to patients for the use of medical marijuana.

(c) Submitting a false statement regarding a qualifying patient’s eligibility to participate in the Program on the form developed pursuant to § 7-1761.04(b)(2) shall be grounds for the revocation, suspension, or denial of a license to practice medicine or osteopathy, or the imposition of a civil fine pursuant to § 3-1205.14(c), or both.

(Feb. 25, 2010, D.C. Law 13-315, § 8, as added July 27, 2010, D.C. Law 18-210, § 2, 57 DCR 4798.)

Legislative history of Law 18-210. — For Law 18-210, see notes following § 7-1671.01.

§ 7-1671.08. Penalties.

(a) Any person who manufactures, cultivates, possesses, administers, dispenses, distributes, or uses marijuana, or manufactures, possesses, distributes, or uses paraphernalia, in a manner not authorized by this chapter or the rules issued pursuant to § 7-1671.13 shall be subject to criminal prosecution and sanction under subchapter I of Chapter 11 of Title 48 [§ 48-1101 et seq.].

(b) Any person who makes a fraudulent representation to a law enforcement official of any fact or circumstance relating to the person's manufacture, cultivation, possession, administration, dispensing, distribution, or use of medical marijuana, or manufacture, possession, distribution, or use of paraphernalia, to avoid arrest or prosecution shall be subject to a criminal fine not to exceed \$1,000. The imposition of the fine shall be in addition to any other penalties that may otherwise apply for the making of a false statement or for the manufacture, cultivation, possession, administration, dispensing, distribution, or use of marijuana, or the manufacture, possession, distribution, or use of paraphernalia.

(c) It shall be an affirmative defense to a criminal charge of possession or distribution of marijuana, or possession with intent to distribute marijuana, that the person charged with the offense is a person who:

(1) Was in possession of medical marijuana only inside the qualifying patient's residence or a medical treatment facility;

(2) Only administered or assisted in administering the medical marijuana to the qualifying patient and only within the qualifying patient's residence or at a permitted medical treatment facility;

(3) Assisted the qualifying patient only when the caregiver was not reasonably available to provide assistance; and

(4) Is 18 years of age or older.

(d) Civil fines, penalties, and fees may be imposed as sanctions for any infraction of the provisions of this chapter, or any rules issued under § 7-1671.13, pursuant to Chapter 18 of Title 2 [§ 2-1801.01 et seq.]. Adjudication of any infraction of this chapter shall be pursuant to Chapter 18 of Title 2 [§ 2-1801.01 et seq.].

(Feb. 25, 2010, D.C. Law 13-315, § 9, as added July 27, 2010, D.C. Law 18-210, § 2, 57 DCR 4798.)

Legislative history of Law 18-210. — For Law 18-210, see notes following § 7-1671.01.

§ 7-1671.09. Medical Marijuana Advisory Committee.

(a) The Mayor shall establish a Medical Marijuana Advisory Committee ("Committee"), which shall monitor:

§ 7-1671.10

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- (1) Best practices in other states that allow the use of medical marijuana;
 - (2) Scientific research on the medical use of marijuana; and
 - (3) The effectiveness of the District's medical marijuana program.
- (b) No later than January 1, 2012, the Committee shall submit a report to the Mayor and the Council recommending:
- (1) Whether the District of Columbia should allow qualifying patients and caregivers to cultivate medical marijuana;
 - (2) How to implement and regulate cultivation of medical marijuana by qualifying patients and caregivers; and
 - (3) Any other comments the Committee believes to be important.

(Feb. 25, 2010, D.C. Law 13-315, § 10, as added July 27, 2010, D.C. Law 18-210, § 2, 57 DCR 4798.)

Legislative history of Law 18-210. — For Law 18-210, see notes following § 7-1671.01.

§ 7-1671.10. Fees.

(a) The Mayor is authorized to establish, by rulemaking, fees for the registration of caregivers, cultivation centers, dispensaries, and qualifying patients and for the inspection and audit of cultivation centers and dispensaries.

(b) Any of the fees collected pursuant to this chapter shall be applied first toward the cost of administering this chapter.

(Feb. 25, 2010, D.C. Law 13-315, § 11, as added July 27, 2010, D.C. Law 18-210, § 2, 57 DCR 4798.)

Legislative history of Law 18-210. — For Law 18-210, see notes following § 7-1671.01.

§ 7-1671.11. Liability.

(a) No liability shall be imposed by virtue of this chapter upon any duly authorized District officer engaged in the enforcement of any law relating to controlled substances.

(b) The District shall not be held liable for any deleterious outcomes from the use of medical marijuana, including the acts or omissions of any qualifying patient attributed to the use of medical marijuana.

(Feb. 25, 2010, D.C. Law 13-315, § 12, as added July 27, 2010, D.C. Law 18-210, § 2, 57 DCR 4798.)

Legislative history of Law 18-210. — For Law 18-210, see notes following § 7-1671.01.

§ 7-1671.12. Public and private insurance.

Nothing in this chapter shall require a governmental, private, or any other health insurance provider or health care service plan to be liable for any claim for reimbursement for the use of medical marijuana.

(Feb. 25, 2010, D.C. Law 13-315, § 13, as added July 27, 2010, D.C. Law 18-210, § 2, 57 DCR 4798.)

Legislative history of Law 18-210.— For Law 18-210, see notes following § 7-1671.01.

§ 7-1671.13. Rules.

(a) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], shall issue rules to implement the provisions of this chapter, including rules to:

(1) Adopt manufacturing practices that cultivation centers and dispensaries shall be required to comply with to ensure that medical marijuana sold by cultivation centers and dispensaries is of pharmaceutical grade;

(2) Ensure that the labeling on medical marijuana sold by cultivation centers and dispensaries provides sufficient information for qualifying patients to be able to make informed choices;

(3) Ensure that each cultivation center and dispensary has appropriate signage and outdoor lighting and an appropriate security system, security plan, and theft prevention plan;

(4) Limit the hours during which dispensaries and cultivation centers may operate;

(5) Determine, for the purpose of ensuring that qualifying patients have adequate access to medical marijuana, the number of cultivation centers that may operate in the District, based on the number of qualifying patients expected to register in the first year of the Program's operation; provided, that the Mayor may adjust this number through rulemaking based on:

(A) The number of registered qualifying patients; and

(B) The number of qualifying patients expected to register in the subsequent 180 days;

(6) Determine the amount of any registration fee for any dispensary or cultivation center; and

(7) Determine the forms of medical marijuana that dispensaries and cultivation centers shall be permitted to dispense or distribute.

(b) The Mayor shall submit the proposed rules to the Council for a 30-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution, within this 30-day review period, the proposed rules shall be deemed approved.

(Feb. 25, 2010, D.C. Law 13-315, § 14, as added July 27, 2010, D.C. Law 18-210, § 2, 57 DCR 4798.)

Legislative history of Law 18-210.— For Law 18-210, see notes following § 7-1671.01.

SUBTITLE H. TOBACCO SMOKING, SALES,
DISTRIBUTION, REGULATION, AND SETTLEMENT.

CHAPTER 17. RESTRICTIONS ON TOBACCO SMOKING.

Subchapter I. General

Sec.

- 7-1701. Findings and purpose.
- 7-1702. Definitions.
- 7-1703. Smoking restrictions.
- 7-1703.01. Designated nonsmoking areas in restaurants; new construction and major renovation to existing restaurants; smoking areas.
- 7-1703.02. Regulation of smoking in any District of Columbia workplace.
- 7-1703.03. Prohibition of employment discrimination on the basis of tobacco use.
- 7-1703.04. No smoking within 25 feet of property signs.
- 7-1704. "No Smoking" signs.
- 7-1705. Enforcement.
- 7-1706. Penalties.
- 7-1707. Severability.
- 7-1708. Exceptions.
- 7-1709. Tobacco smoking education and smoking cessation programs.
- 7-1710. Smoking prohibitions pursuant to existing law.

Subchapter I-A. Prohibited Sales of Tobacco

- 7-1721.01. Definitions.

Sec.

- 7-1721.02. Sale of tobacco to minors under 18 years of age.
- 7-1721.03. Purchase or possession of tobacco by minors under 18 years of age; use of false identification.
- 7-1721.04. Self-service sale of tobacco.
- 7-1721.05. Package requirements.
- 7-1721.06. Prohibited sellers.
- 7-1721.07. Civil penalties.

Subchapter II. Distribution of Free Cigarettes

- 7-1731. Distribution of free cigarettes prohibited; penalty.

Subchapter III. Fire-Standard-Compliant Cigarettes

- 7-1751. Definitions.
- 7-1752. Prohibition on sale of cigarettes that are not fire-standard-compliant.
- 7-1753. Test method and performance standard.
- 7-1754. Manufacturer's certification.
- 7-1755. Manufacturer's data retention and availability requirements.
- 7-1756. Penalties and remedies.
- 7-1757. Rules; limitations.

Subchapter I. General.

§ 7-1701. Findings and purpose.

(a) The Council of the District of Columbia finds that the inhalation of concentrated smoke resulting from the smoking of tobacco in facilities in which the public congregates is a clear danger to health and a cause of inconvenience and discomfort to persons present in such facilities.

(b) The purpose of this subchapter is to protect the public health, comfort, and environment by prohibiting smoking in certain facilities, vehicles, and restaurants open to or used by the general public.

(c) Except to the extent that § 8 of D.C. Law 3-22 modifies the Fire Prevention Code approved pursuant to the Construction Codes Approval and Amendments Act of 1986, this subchapter is intended to complement the provisions of Part 2 of those regulations and the provisions of §§ 35-251 to 35-253, which regulate public conduct on public passenger vehicles. It is not the intent of this subchapter to derogate in any manner from the provisions of the Fire Prevention Code approved pursuant to the Construction Codes Approval and Amendments Act of 1986 or from § 35-251(b)(1).

(Sept. 28, 1979, D.C. Law 3-22, § 2, 26 DCR 390; Mar. 21, 1987, D.C. Law

6-216, § 13(g), 34 DCR 1072; Mar. 29, 1988, D.C. Law 7-100, § 2(a), 35 DCR 1182.)

Prior Codifications. — 1981 Ed., §¹ 6-911. 1973 Ed., § 6-821.

Legislative history of Law 3-22. — Law 3-22, the “District of Columbia Smoking Restriction Act of 1979,” was introduced in Council and assigned Bill No. 3-109, which was referred to the Committee on Transportation and Environmental Affairs. The Bill was adopted on first and second readings on May 22, 1979 and June 19, 1979, respectively. Signed by the Mayor on July 12, 1979, it was assigned Act No. 3-66 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-216. — Law 6-216, the “Construction Codes Approval and Amendments Act of 1986,” was introduced in Council and assigned Bill No. 6-500, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 18, 1986 and December 16, 1986, respectively. Signed by the Mayor on February 2, 1987, it was assigned Act No. 6-279 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-100. — For legislative history of D.C. Law 7-100, see Historical and Statutory Notes following § 7-1703.01.

References in text. — The “Construction Codes Approval and Amendments Act of 1986,” referred to in two places in subsection (c), is D.C. Law 6-216.

Delegation of Authority. — Delegation of authority under D.C. Law 3-22, the District of Columbia Smoking Restriction Act of 1979, see Mayor’s Order 90-192, December 13, 1990.

Delegation of authority pursuant to D.C. Law 3-22, the “District of Columbia Smoking Restrictions Act of 1979”, see Mayor’s Order 98-138, August 20, 1998 (45 DCR 6588).

Amended Delegation of authority pursuant to D.C. Law 3-22, the “District of Columbia Smoking Restrictions Act of 1979”, see Mayor’s Order 98-161, September 25, 1998 (45 DCR 7734).

Editor’s notes. — Section 151 of Public Law 106-522 provided for a Federal contribution of \$100,000 to the Metropolitan Police Department of the District of Columbia, effective upon the enactment by the District of Columbia of a law which banned the possession of tobacco products by minors; and provided that the Metropolitan Police Department shall use the contribution to enforce that law.

Section 130 of Pub. L. 107-96 provided for a Federal contribution of \$100,000 to the Metropolitan Police Department of the District of Columbia, effective upon the enactment by the District of Columbia of a law which banned the possession of tobacco products by minors; and provided that the Metropolitan Police Department shall use the contribution to enforce that law.

CASE NOTES

In general.

Nonsmoking inmates, who were in custody of defendant District of Columbia Department of Corrections, and who alleged that defendant violated their Eighth Amendment and statutory rights by exposing them to environmental tobacco smoke (ETS), commonly known as second-hand smoke, were entitled to permanent injunction requiring defendant to take all steps necessary to assure that plaintiff inmates would be assigned sleeping quarters with other nonsmokers and to otherwise enforce its non-

smoking policy in those areas where plaintiff inmates were compelled to be; thus, where it was required for them to use common areas with smoking prisoners, institution would be required to enforce its nonsmoking policy. U.S. Const. Amend. 8; D.C. Code 1981, § 6-911 et seq. *Crowder v. District of Columbia*, 959 F. Supp. 6, 1997 U.S. Dist. LEXIS 3230 (1997), reversed sub nomine *Scott v. District of Columbia*, 139 F.3d 940, 329 U.S. App. D.C. 247, 1998 U.S. App. LEXIS 6697 (1998).

§ 7-1702. Definitions.

For the purpose of this subchapter:

(1) “Educational facility” means any enclosed indoor area used primarily as a library or for instruction of enrolled students, including day care centers, nursery schools, elementary schools, and secondary schools, except smoking lounges or specific smoking areas approved by the principal or president of the school, college, or university pursuant to guidelines established by the Board of Education, in the case of a public school, or by the trustees or other

governing body, in the case of a college, university, or private educational institution. The term “educational facility” shall include all enclosed indoor areas supportive of instruction, including, but not limited to, classrooms, cafeterias, study areas and libraries, but excluding faculty lounges and specific areas approved by the principal of a given school pursuant to guidelines established by the Superintendent of Schools or the head of such private institutions.

(2) “Health care facility” means any institution providing individual care or treatment of diseases or other medical, physiological, or psychological conditions, including, but not limited to, hospitals, clinics, laboratories, nursing homes or homes for the aged or chronically ill, but excluding private medical offices.

(3) “Mayor” means the Mayor of the District of Columbia or his designated agent.

(4) “Person” means any individual, firm, partnership, association, corporation, company or organization of any kind, including a government agency to which the health and safety laws of the District of Columbia may be applied.

(5) “Restaurant” means a restaurant as defined in § 25-101(43), and any other establishments licensed by the District of Columbia in the business of preparing or serving food to the public. The term “restaurant” shall include coffee shops, cafeterias, luncheonettes, eateries, and soda fountains. The term “restaurant” shall not include sidewalks, terraces, or space used by restaurants to provide outdoor facilities, nightclubs, or taverns.

(6) “Retail store” means any establishment whose primary purpose is to sell or offer for sale to consumers, not for resale, any goods, wares, merchandise or food for consumption off the premises, and all activities, operations and services connected therewith or incidental thereto. The term “retail store” shall not include separate areas of a retail store which are used as a restaurant.

(7) “Smoking” or “to smoke” means the act of puffing, having in one’s possession, holding or carrying a lighted or smoldering cigar, cigarette, pipe or smoking equipment of any kind or lighting a cigar, cigarette, pipe or smoking equipment of any kind.

(Sept. 28, 1979, D.C. Law 3-22, § 3, 26 DCR 390; Mar. 29, 1988, D.C. Law 7-100, § 2(b), 35 DCR 1182.)

Section references. — This section is referred to in § 7-1703.

Prior Codifications. — 1981 Ed., § 6-912. 1973 Ed., § 6-822.

Legislative history of Law 3-22. — For legislative history of D.C. Law 3-22, see Historical and Statutory Notes following § 7-1701.

Legislative history of Law 7-100. — For

legislative history of D.C. Law 7-100, see Historical and Statutory Notes following § 7-1703.01.

Delegation of Authority. — Delegation of authority under D.C. Law 3-22, the District of Columbia Smoking Restriction Act of 1979, see Mayor’s Order 90-192, December 13, 1990.

§ 7-1703. Smoking restrictions.

Smoking shall be prohibited in the following:

- (1) Any elevator, except in a single-family dwelling;

(2) Any public selling area of a retail store, except in a tobacco shop or store primarily concerned with selling tobacco and smoking equipment;

(3) Any public assembly or hearing room which is owned or leased by any branch, agency, or instrumentality of the District of Columbia government; this subsection shall not apply to the District of Columbia National Guard Armory or to the Robert F. Kennedy Memorial Stadium;

(4) Any educational facility except as provided in § 7-1702(1);

(5) While transporting passengers within the corporate limits of the District of Columbia, any passenger vehicle owned or operated by the District of Columbia government, or any passenger vehicle for hire regulated under § 47-2829, except that smoking with the prior consent of all occupants of the vehicle shall be permitted when the vehicle is a limousine;

(6) Any area of a health care facility frequented by the general public, including hallways, waiting rooms and lobbies. The operator of a health care facility may designate separate areas as smoking areas.

(A) When a health care facility permits patients to smoke in bed space areas, such facility shall make a reasonable effort to determine a patient's individual nonsmoking or smoking preference and assign patients who are to be placed in bed space areas utilized by 2 or more patients to a bed space area with patients who have a similar smoking preference.

(B) Hospital staff, visitors and the general public shall not smoke in bed space areas utilized by nonsmoking patients. "No Smoking" signs shall be conspicuously posted in such bed space areas.

(7) Any restaurant except as permitted in § 7-1703.01.

(8) Any public or private workplace, except as provided in § 7-1703.02.

(Sept. 28, 1979, D.C. Law 3-22, § 4, 26 DCR 390; Mar. 29, 1988, D.C. Law 7-100, § 2(c), 35 DCR 1182; May 2, 1991, D.C. Law 8-262, § 2(a), 37 DCR 8434.)

Cross references. — For additional restrictions on smoking in all places of employment and enclosed public areas, see § 7-741 et seq.

Prior Codifications. — 1981 Ed., § 6-913. 1973 Ed., § 6-823.

Legislative history of Law 3-22. — For legislative history of D.C. Law 3-22, see Historical and Statutory Notes following § 7-1701.

Legislative history of Law 7-100. — For legislative history of D.C. Law 7-100, see Historical and Statutory Notes following § 7-1703.01.

Legislative history of Law 8-262. — For legislative history of D.C. Law 8-262, see Historical and Statutory Notes following § 7-1703.02.

Delegation of Authority. — Delegation of authority under D.C. Law 3-22, the District of Columbia Smoking Restriction Act of 1979, see Mayor's Order 90-192, December 13, 1990.

Editor's notes. — For complete smoking ban in all places of employment and public places, see § 7-742.

§ 7-1703.01. Designated nonsmoking areas in restaurants; new construction and major renovation to existing restaurants; smoking areas.

(a) Except as provided in subsection (b) of this section, the owner, manager, or person in charge of any restaurant having a seating capacity of 50 or more shall designate at least 25% of the total seating capacity as a nonsmoking area. Bar and lounge seating in the restaurant is excluded from this total seating

capacity calculation. Smoking shall be prohibited in these nonsmoking areas even if, after a certain hour, food is no longer served.

(b) Any new construction for the purpose of establishing a restaurant or major renovation, performed on or after March 29, 1988, to an existing restaurant, which has a seating capacity of 50 or more, shall contain a nonsmoking area that is at least 50% of the total seating capacity. Bar and lounge seating in the restaurant is excluded from this total seating capacity calculation. Smoking shall be prohibited in these nonsmoking areas even if, after a certain hour, food is no longer served. In accordance with § 7-1705(c), the Mayor shall define the term "major renovation".

(c)(1) In areas where smoking is permitted pursuant to any provision of this subchapter, physical barriers or separate rooms may be used to the greatest extent possible to minimize the smoke in adjacent nonsmoking areas. Ventilation shall be in compliance with the District of Columbia laws and rules governing indoor ventilation.

(2) No area shall be designated as a smoking area where smoking is prohibited by the Fire Marshal or by other District of Columbia laws or rules.

(3) Smoking areas shall comply with all laws and rules of the District of Columbia.

(Sept. 28, 1979, D.C. Law 3-22, § 4a, as added Mar. 29, 1988, D.C. Law 7-100, § 2(d), 35 DCR 1182.)

Section references. — This section is referred to in § 7-1703.

Prior Codifications. — 1981 Ed., § 6-913.1.

Legislative history of Law 7-100. — Law 7-100, the "District of Columbia Smoking Restriction Act of 1979 Amendment Act of 1987," was introduced in Council and assigned Bill No. 7-218, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on January 5, 1988 and

January 19, 1988, respectively. Signed by the Mayor on February 11, 1988, it was assigned Act No. 7-144 and transmitted to both Houses of Congress for its review.

Delegation of Authority. — Delegation of authority under D.C. Law 3-22, the District of Columbia Smoking Restriction Act of 1979, see Mayor's Order 90-192, December 13, 1990.

Editor's notes. — For complete smoking ban in all places of employment and public places, see § 7-742.

§ 7-1703.02. Regulation of smoking in any District of Columbia workplace.

(a) Any private or public employer in the District of Columbia ("District") shall, within 3 months of May 2, 1991, adopt, implement, and maintain a written smoking policy that contains the following provisions:

(1) Designation of an area in the workplace where smoking may be permitted. In an area where smoking is permitted, a physical barrier or a separate room shall be used to minimize smoke in any nonsmoking area. Ventilation shall be in compliance with the District laws and rules that govern indoor ventilation.

(2) Notification to employees orally and in writing by conspicuously posting the employer's smoking policy within 3 weeks after the smoking policy is adopted. Any person in the workplace shall be subject to the posted smoking policy of the employer.

(b) The designation of a smoking area in the workplace affects employment

relations and shall be a subject of collective bargaining in accordance with § 1-617.08(b).

(c) Nothing in the Smoking Regulation Amendment Act of 1990 shall be construed to prevent the owner or person in charge of a building or any part of a building from prohibiting smoking throughout the building or in any part of the building over which she or he has control.

(Sept. 28, 1979, D.C. Law 3-22, § 4b, as added May 2, 1991, D.C. Law 8-262, § 2(b), 37 DCR 8434.)

Section references. — This section is referred to in § 7-1703.

Prior Codifications. — 1981 Ed., § 6-913.2.

Legislative history of Law 8-262. — Law 8-262, the “Smoking Regulation Amendment Act of 1990,” was introduced in Council and assigned Bill No. 8-581, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on November 20, 1990, and December 4, 1990, respec-

tively. Signed by the Mayor on December 14, 1990, it was assigned Act No. 8-278 and transmitted to both Houses of Congress for its review.

References in text. — The “Smoking Regulation Amendment Act of 1990,” referred to in (c), is D.C. Law 8-262.

Editor’s notes. — For complete smoking ban in all places of employment and public places, see § 7-742.

§ 7-1703.03. Prohibition of employment discrimination on the basis of tobacco use.

(a) No person shall refuse to hire or employ any applicant for employment, or discharge or otherwise discriminate against any employee with respect to compensation or any other term, condition, or privilege of employment, on the basis of the use by the applicant or employee of tobacco or tobacco products. Nothing in this section shall be construed as limiting a person from establishing or enforcing workplace smoking restrictions that are required or permitted by this subchapter or other District or federal laws, or in establishing tobacco-use restrictions or prohibitions that constitute bona fide occupational qualifications.

(b) Any employee or applicant for employment who is aggrieved by a violation of subsection (a) of this section shall have a private cause of action against the person. An employee or applicant for employment shall pursue and exhaust all remedies available pursuant to any collective bargaining agreement, grievance procedure, or other established means of resolving employer-employee disputes, to resolve a violation of subsection (a) of this section, prior to commencing a civil action.

(c) Any employee or applicant for employment who is aggrieved by a violation of subsection (a) of this section shall be entitled to recover any damages, including lost or back wages or salary. The court, in its discretion, may allow the prevailing party a reasonable attorney’s fee as part of the costs.

(Sept. 28, 1979, D.C. Law 3-22, § 4(b), as added Mar. 17, 1993, D.C. Law 9-240, § 2, 40 DCR 627.)

Prior Codifications. — 1981 Ed., § 6-913.3.

Legislative history of Law 9-240. — Law

9-240, the “Prohibition of Employment Discrimination on the Basis of Tobacco Use Amendment Act of 1992,” was introduced in

Council and assigned Bill No. 9-504, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on December 1, 1992, and December 15, 1992, respectively. Signed by the Mayor on

January 5, 1993, it was assigned Act No. 9-374 and transmitted to both Houses of Congress for its review. D.C. Law 9-240 became effective on March 17, 1993.

§ 7-1703.04. No smoking within 25 feet of property signs.

(a) A property owner or ground-floor commercial tenant has the authority to post signs on his or her property stating that smoking is not permitted on public space within a specified distance from and abutting the building wall. That distance shall not be greater than 25 feet or the distance to the far side of the adjacent public sidewalk, if any, whichever is less.

(b) An authorized sidewalk caf shall not be subject to a no-smoking sign posted pursuant to this section unless the sign has been posted by, or with the consent of, the owner or operator of the sidewalk caf.

(c) The penalties in § 7-1721.06 shall not apply to this section.

(Sept. 28, 1979, D.C. Law 3-22, § 4d, as added July 23, 2010, D.C. Law 18-189, § 2, 57 DCR 3019.)

Legislative history of Law 18-189. — Law 18-189, the “Prohibition Against Selling Tobacco Products to Minors Amendment Act of 2010”, was introduced in Council and assigned Bill No. 18-431, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second read-

ings on January 5, 2010, and February 2, 2010, respectively. Enacted without signature by the Mayor on May 11, 2010, it was assigned Act No. 18-352 and transmitted to both Houses of Congress for its review. D.C. Law 18-189 became effective on July 23, 2010.

§ 7-1704. “No Smoking” signs.

(a) In any place, elevator, or vehicle in which smoking is prohibited, the owner, manager, or person in charge of the place, elevator, or vehicle shall post or cause to be posted signs that read, “No Smoking Under Penalty of Law”, “No Smoking Except in Smoking Areas”, or “Smoking in Accordance With Employer’s Smoking Policy Only”. In any place, elevator, or vehicle where smoking is restricted, the sign shall include the following warning: “Smoking causes lung cancer, heart disease, emphysema, and may cause fetal injury, premature birth, and low birth weight in pregnant women.” Signs posted shall clearly state the maximum fine for a violation of this subchapter. Signs shall be visible to the public at the entrance to the area and on the interior of the area in sufficient number in a manner that gives notice to the public of the applicable law.

(b) Where smoking is prohibited pursuant to this subchapter all signs posted shall include the internationally recognized no smoking symbol. Where smoking is restricted pursuant to this subchapter all signs posted shall include the internationally recognized smoking symbol.

(c) It shall be unlawful for any person to obscure, remove, deface, mutilate, or destroy any sign posted in accordance with the provisions of this subchapter.

(Sept. 28, 1979, D.C. Law 3-22, § 5, 26 DCR 390; Mar. 29, 1988, D.C. Law

7-100, § 2(e), 35 DCR 1182; May 2, 1991, D.C. Law 8-262, § 2(c), 37 DCR 8434; Mar. 17, 1993, D.C. Law 9-223, § 2, 40 DCR 590.)

Section references. — This section is referred to in §§ 7-742 and 7-1706.

Prior Codifications. — 1981 Ed., § 6-914. 1973 Ed., § 6-824.

Legislative history of Law 3-22. — For legislative history of D.C. Law 3-22, see Historical and Statutory Notes following § 7-1701.

Legislative history of Law 7-100. — For legislative history of D.C. Law 7-100, see Historical and Statutory Notes following § 7-1703.01.

Legislative history of Law 8-262. — For legislative history of D.C. Law 8-262, see Historical and Statutory Notes following § 7-1703.02.

Legislative history of Law 9-223. — Law

9-223, the "Smoking Regulation Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-496, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on December 1, 1992, and December 15, 1992, respectively. Signed by the Mayor on December 31, 1992, it was assigned Act No. 9-354 and transmitted to both Houses of Congress for its review. D.C. Law 9-223 became effective on March 17, 1993.

Delegation of Authority. — Delegation of authority under D.C. Law 3-22, the District of Columbia Smoking Restriction Act of 1979, see Mayor's Order 90-192, December 13, 1990.

§ 7-1705. Enforcement.

(a) The owner, lessee, manager, operator or other person in charge of a facility or vehicle where smoking is prohibited pursuant to this chapter shall:

(1) Post and maintain the appropriate "No Smoking" signs; and

(2) Ask persons observed smoking in violation of this subchapter to refrain from smoking.

(b) Whenever the owner, lessee, manager or operator of a facility covered by this subchapter requires a license issued by the District of Columbia government in order to operate the facility, the owner, lessee, manager or operator shall comply with this subchapter as a requirement for receiving or renewing the license. Where an on-site inspection is required prior to issuance or renewal of a license, the inspector should certify that the appropriate signs have been posted. In those cases where an on-site inspection is not needed, a signed statement by the applicant that he has complied with this subchapter shall constitute sufficient evidence of compliance as required in this subsection. Violation of this subchapter shall be grounds for license suspension or revocation.

(c) The Mayor is authorized to promulgate any regulations needed to carry out the provisions of this subchapter.

(d) An aggrieved person or class of persons may bring an action in the Superior Court of the District of Columbia for injunctive relief to prevent any owner, lessee, manager, operator or person otherwise in charge of a facility or vehicle where smoking is prohibited pursuant to this subchapter from violating, or continuing to violate, any provision of this subchapter. For the purposes of this subsection, an "aggrieved person" shall be defined as any person subjected to tobacco smoke due to failure to comply with this subchapter.

(Sept. 28, 1979, D.C. Law 3-22, § 6, 26 DCR 390; Mar. 29, 1988, D.C. Law 7-100, § 2(f), 35 DCR 1182.)

Section references. — This section is referred to in § 7-1703.01.

Prior Codifications. — 1981 Ed., § 6-915. 1973 Ed., § 6-825.

Legislative history of Law 3-22. — For legislative history of D.C. Law 3-22, see Historical and Statutory Notes following § 7-1701.

Legislative history of Law 7-100. — For legislative history of D.C. Law 7-100, see Historical and Statutory Notes following § 7-1703.01.

Delegation of Authority. — Delegation of authority under D.C. Law 3-22, the District of Columbia Smoking Restriction Act of 1979, see Mayor's Order 90-192, December 13, 1990.

§ 7-1706. Penalties.

(a) Any person who violates any provision of this subchapter, other than § 8 of D.C. Law 3-22, by:

(1) Smoking in a posted "No Smoking" area or defacing or removing a "No Smoking" sign, or failing to post warning signs as set forth in § 7-1704(a) shall, upon conviction, be punishable by a fine of not less than \$10 nor more than \$50 for a 1st offense; and not less than \$50 nor more than \$100 for each 2nd or subsequent offense; or

(2) Obscuring, removing, defacing, mutilating or destroying any sign posted in accordance with the provisions of this subchapter shall, upon conviction, be punishable by a fine of not more than \$300; or

(3) Failing to post or cause to be posted or to maintain "No Smoking" signs and by failing to warn a smoker observed to be smoking in violation of this subchapter to stop smoking, as required by this subchapter, shall, upon conviction, be punishable by a fine of not more than \$300. Each and every day that the violation continues shall constitute a separate offense, and the penalties provided for in this paragraph shall be applicable to each separate offense; provided, that such penalties shall not be levied against any employee or officer of any branch, agency or instrumentality of the District of Columbia government.

(b) The Mayor is authorized to establish procedures for the issuance of a citation to any person who violates this subchapter requiring the person to post collateral in accordance with § 16-704 to assure the person's appearance in the Superior Court of the District of Columbia to answer the citation, and such collateral may be forfeited in lieu of an appearance as the Court may direct.

(c) Issuances of citations pursuant to subsection (b) of this section shall not constitute arrests nor shall forfeitures of collateral pursuant to said subsection constitute convictions. Records which may be maintained in connection with the implementation of this section shall not constitute records of arrest under § 5-113.02, relating to arrest records, or paragraph (4) of § 5-113.01.

(d) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this subchapter, or any rules or regulations issued under the authority of this subchapter, pursuant to § 2-1801.01 et seq. Adjudication of any infraction of this subchapter shall be pursuant to § 2-1801.01 et seq.

(Sept. 28, 1979, D.C. Law 3-22, § 7, 26 DCR 390; Oct. 5, 1985, D.C. Law 6-42, § 411, 32 DCR 4450; Mar. 29, 1988, D.C. Law 7-100, § 2(g), 35 DCR 1182; May 2, 1991, D.C. Law 8-262, § 2(d), 37 DCR 8434.)

Prior Codifications. — 1981 Ed., § 6-916. 1973 Ed., § 6-826.

Legislative history of Law 3-22. — For legislative history of D.C. Law 3-22, see Historical and Statutory Notes following § 7-1701.

Legislative history of Law 6-42. — Law 6-42, the “Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985,” was introduced in Council and assigned Bill No. 6-187, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 25, 1985, and July 9, 1985, respectively. Signed by the Mayor on July 16, 1985, it was assigned

Act No. 6-60 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-100. — For legislative history of D.C. Law 7-100, see Historical and Statutory Notes following § 7-1703.01.

Legislative history of Law 8-262. — For legislative history of D.C. Law 8-262, see Historical and Statutory Notes following § 7-1703.02.

Delegation of Authority. — Delegation of authority under D.C. Law 3-22, the District of Columbia Smoking Restriction Act of 1979, see Mayor’s Order 90-192, December 13, 1990.

§ 7-1707. Severability.

If any provision of this subchapter, or its application to a particular person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this subchapter.

(Sept. 28, 1979, D.C. Law 3-22, § 9, 26 DCR 390.)

Prior Codifications. — 1981 Ed., § 6-917. 1973 Ed., § 6-827.

Legislative history of Law 3-22. — For legislative history of D.C. Law 3-22, see Historical and Statutory Notes following § 7-1701.

Delegation of Authority. — Delegation of authority under D.C. Law 3-22, the District of Columbia Smoking Restriction Act of 1979, see Mayor’s Order 90-192, December 13, 1990.

§ 7-1708. Exceptions.

This subchapter shall not prohibit smoking in the following areas:

- (1) An area where smoking is permitted by any provision of this subchapter;
- (2) A tobacco shop or store primarily concerned with selling tobacco and smoking equipment;
- (3) Upon the stage by performers during the course of any theatrical performance if smoking is part of the theatrical production;
- (4) A tavern or nightclub as defined in § 25-101(52) and (33), respectively; or
- (5) A room or hall that is used for private social functions, which includes weddings, banquets, and parties.

(Sept. 28, 1979, D.C. Law 3-22, § 10, as added Mar. 29, 1988, D.C. Law 7-100, § 2(h), 35 DCR 1182; Mar. 2, 2007, D.C. Law 16-191, § 34, 53 DCR 6794.)

Prior Codifications. — 1981 Ed., § 6-918.

Effect of amendments. — D.C. Law 16-191, in par. (4), substituted “§ 25-101(52) and (33)” for “§ 25-103(17) and (23)”.

Legislative history of Law 7-100. — For legislative history of D.C. Law 7-100, see Historical and Statutory Notes following § 7-1703.01.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 7-103.

References in text. — Section 25-103, re-

ferred to in paragraph (4) of this section, is part of Title 25, D.C. Code, which title was amended and enacted by D.C. Law 13-298, effective May 3, 2001. For disposition of the subject matter of former Title 25, see the Disposition Table preceding § 25-101.

Delegation of Authority. — Delegation of authority under D.C. Law 3-22, the District of Columbia Smoking Restriction Act of 1979, see Mayor’s Order 90-192, December 13, 1990.

§ 7-1709. Tobacco smoking education and smoking cessation programs.

The Mayor shall establish, in conjunction with the District of Columbia Commissioner of Public Health or any other agencies or departments of the District, a program to educate the general public on the issue of smoking and involuntary smoking, the health risks involved, and the requirements of this subchapter, explaining what the subchapter does and why it is important. The Mayor shall establish a smoking cessation program that provides free counseling, information, and whatever other assistance is deemed necessary by the District of Columbia Commissioner of Public Health for the purpose of assisting, upon request, persons residing in the District of Columbia to stop smoking tobacco products.

(Sept. 28, 1979, D.C. Law 3-22, § 11, as added Mar. 29, 1988, D.C. Law 7-100, § 2(i), 35 DCR 1182.)

Prior Codifications. — 1981 Ed., § 6-919.
Legislative history of Law 7-100. — For legislative history of D.C. Law 7-100, see Historical and Statutory Notes following § 7-1703.01.

Delegation of Authority. — Delegation of authority under D.C. Law 3-22, the District of Columbia Smoking Restriction Act of 1979, see Mayor's Order 90-192, December 13, 1990.

§ 7-1710. Smoking prohibitions pursuant to existing law.

Nothing in this subchapter shall make lawful smoking in any place in which smoking is prohibited pursuant to § 6-1401 et seq., § 35-251(b), or any other District of Columbia or federal law.

(Sept. 28, 1979, D.C. Law 3-22, § 12, as added Mar. 29, 1988, D.C. Law 7-100, § 2(j), 35 DCR 1182.)

Prior Codifications. — 1981 Ed., § 6-920.
Legislative history of Law 7-100. — For legislative history of D.C. Law 7-100, see Historical and Statutory Notes following § 7-1703.01.

Delegation of Authority. — Delegation of authority under D.C. Law 3-22, the District of Columbia Smoking Restriction Act of 1979, see Mayor's Order 90-192, December 13, 1990.

Subchapter I-A. Prohibited Sales of Tobacco.

§ 7-1721.01. Definitions.

For the purposes of this subchapter, the term:

(1) "Other tobacco product" means a cigar, pipe tobacco, chewing tobacco, smokeless tobacco, snuff, roll-your-own tobacco, cigarette papers or tubes, pipes for smoking tobacco, or any other product containing tobacco that is intended for human consumption.

(2) "Self-service display" means a display that contains tobacco products and is located in an area openly accessible to consumers, and from which consumers can readily access cigarettes or other tobacco product without the assistance of a sales clerk. A display case that holds cigarettes or other tobacco product behind locked doors does not constitute a self-service display.

(3) “Tobacco specialty store” means a retail store that is used primarily for the sale of cigarettes, other tobacco product, and accessories in which the total annual revenue generated by the sale of non-tobacco products or accessories is no greater than 25% of the total revenue of the establishment.

(Feb. 7, 1891, 26 Stat. 736, ch. 117, § 2, as added July 23, 2010, D.C. Law 18-189, § 3(b), 57 DCR 3019.)

Legislative history of Law 18-189. — Law 18-189, the “Prohibition Against Selling Tobacco Products to Minors Amendment Act of 2010”, was introduced in Council and assigned Bill No. 18-431, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second read-

ings on January 5, 2010, and February 2, 2010, respectively. Enacted without signature by the Mayor on May 11, 2010, it was assigned Act No. 18-352 and transmitted to both Houses of Congress for its review. D.C. Law 18-189 became effective on July 23, 2010.

§ 7-1721.02. Sale of tobacco to minors under 18 years of age.

(a) No person shall sell, give, or furnish any cigarette or other tobacco product to, or purchase any cigarette or other tobacco product on behalf of, any person under 18 years of age.

(b)(1) Any person who sells any cigarette or other tobacco product and who has reasonable cause to believe that a person who attempts to purchase the product is under 27 years of age shall require that the purchaser present identification that indicates his or her age.

(2) It shall be an affirmative defense to a violation of paragraph (1) of this subsection that, at the time of the relevant sale, the person who attempted to purchase the product was 18 years of age or older, or presented identification to the seller that a reasonably prudent person would believe to be valid under the same or similar circumstances.

(c) Any person who violates subsection (a) or (b) of this section is guilty of a misdemeanor and, upon conviction, shall be fined not more than \$500 or less than \$100, imprisoned not more than 30 days, or both, for the first offense. Any person convicted of a subsequent violation of subsection (a) or (b) of this section shall be fined not more than \$1,000 or less than \$500, imprisoned not more than 90 days, or both.

(d) Any license to sell cigarettes issued pursuant to § 47-2404 may be suspended for a first or second violation of subsection (a) or (b) of this section. The license shall be revoked for a third or subsequent violation of subsection (a) or (b) of this section.

(e)(1) In any place or business where a person sells any cigarette or other tobacco product, the owner, manager, or person in charge of the place or business shall post a warning sign that includes the following: “No person under 18 years of age shall purchase any cigarette or other tobacco product. Sales clerks will ask for proof of age from any person seeking to purchase any cigarette or other tobacco product who appears to be under 27 years of age. The United States Surgeon General has issued a warning that smoking causes lung cancer, heart disease, emphysema, and may complicate pregnancy.”.

(2) A sign posted pursuant to paragraph (1) of this subsection shall clearly

state the maximum fine for a violation of this section. The sign shall be visible to the public at the entrance to the area and on the interior of the area in sufficient number to give notice of the law to the public.

(f) Notwithstanding section 1004 of the District of Columbia Municipal Regulations, the Mayor shall collect and maintain a publicly available record of violations under subsection (a) of this section, including:

- (1) The date of the violation; and
- (2) The location where the citation was given.

(Feb. 7, 1891, 26 Stat. 736, ch. 117; May 2, 1991, D.C. Law 8-262, § 3, 37 DCR 8434; designated as § 3, July 23, 2010, D.C. Law 18-189, § 3(a), (c), 57 DCR 3019.)

Cross references. — Cigarette tax, license suspension, see § 47-2404.

Prior Codifications. — 2001 Ed., § 22-1320.

1981 Ed., § 22-1120.

1973 Ed., § 22-1120.

Effect of amendments. — D.C. Law 18-189 rewrote subssecs. (a), (b), and (e)(1); and added subsec. (f).

Legislative history of Law 8-262. — Law 8-262, the “Smoking Regulation Amendment

Act of 1990,” was introduced in Council and assigned Bill No. 8-581, which was referred to the Committee on Public Works. The Bill was adopted on first and second readings on November 20, 1990, and December 4, 1990, respectively. Signed by the Mayor on December 14, 1990, it was assigned Act No. 8-278 and transmitted to both Houses of Congress for its review.

Legislative history of Law 18-189. — For Law 18-189, see notes following § 7-1721.01.

CASE NOTES

Review.

Where a majority of the court did not agree on a specific ground for reversing judgment, conviction of storekeeper for selling cigarettes

to minor under 16 years of age was reversed. D.C. Code 1940, § 22-1120. *Campbell v. District of Columbia*, 32 A.2d 394, 1943 D.C. App. LEXIS 254 (Cr.App. 1943).

§ 7-1721.03. Purchase or possession of tobacco by minors under 18 years of age; use of false identification.

(a)(1) No person under 18 years of age shall purchase any cigarette or other tobacco product, possess any cigarette or other tobacco product, or attempt to purchase or possess any cigarette or other tobacco product.

(2) Paragraph (1) of this subsection shall not apply to a person under 18 years of age who is handling or transporting cigarettes or other tobacco product under the terms of his or her employment.

(b) No person under 18 years of age shall falsely represent his or her age, or possess or present as proof of age an identification document which is in any way fraudulent, for the purpose of purchasing, possessing, or consuming cigarettes or other tobacco product in the District.

(c)(1) Any person who violates subsection (a) of this section shall be subject to a civil penalty of \$50.

(2) Any person who violates subsection (b) of this section shall be subject to a civil penalty for each offense of:

- (A) \$100 the first time the offense or offenses occurred;
- (B) \$200 the second time the offense or offenses occurred; and

(C) \$300 the third and subsequent times the offense or offenses occurred.

(3) A violation of subsection (a) or (b) of this section shall be a civil infraction for the purposes of Chapter 18 of Title 2 [§ 2-1801.01 et seq.].

(4) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], may issue rules to increase the amount of the fine for a violation of subsection (a) or (b) of this section.

(Feb. 7, 1891, 26 Stat. 736, ch. 117, § 4, as added July 23, 2010, D.C. Law 18-189, § 3(d), 57 DCR 3019.)

Legislative history of Law 18-189. — For Law 18-189, see notes following § 7-1721.01.

§ 7-1721.04. Self-service sale of tobacco.

(a) No person shall sell or distribute cigarettes or other tobacco product, except cigars, through a self-service display.

(b) Subsection (a) of this section shall not apply to:

(1) Vending machines that are permitted under § 47-2404(b)(3); or

(2) Self-service displays that are located in a tobacco specialty store.

(1) Any person who violates subsection (a) of this section is guilty of a misdemeanor and, upon conviction, shall be fined not more than \$500 nor less than \$100, imprisoned not more than 30 days, or both, for the first offense. Any person convicted of a subsequent violation of subsection (a) of this section shall be fined not more than \$1,000 nor less than \$500, imprisoned not more than 90 days, or both.

(Feb. 7, 1891, 26 Stat. 736, ch. 117, § 5, as added July 23, 2010, D.C. Law 18-189, § 3(d), 57 DCR 3019.)

Legislative history of Law 18-189. — For Law 18-189, see notes following § 7-1721.01.

§ 7-1721.05. Package requirements.

(a) No person shall sell or distribute to any person within the District of Columbia any cigarettes except in packages containing no less than 20 cigarettes.

(b) This section does not apply to a tobacco specialty store.

(1) Any person who violates subsection (a) of this section is guilty of a misdemeanor and, upon conviction, shall be fined not more than \$500 nor less than \$100, imprisoned not more than 30 days, or both, for the first offense. Any person convicted of a subsequent violation of subsection (a) of this section shall be fined not more than \$1,000 nor less than \$500, imprisoned not more than 90 days, or both.

(d) Any license to sell cigarettes or other tobacco product issued pursuant to § 47-2404 may be suspended for a first or second violation of subsection (a) of this section. The license shall be revoked for a third or subsequent violation of subsection (a) of this section.

(Feb. 7, 1891, 26 Stat. 736, ch. 117, § 6, as added July 23, 2010, D.C. Law 18-189, § 3(d), 57 DCR 3019.)

Legislative history of Law 18-189. — For Law 18-189, see notes following § 7-1721.01.

§ 7-1721.06. Prohibited sellers.

(a) Except as provided in subsection (b) of this section, no cigarette or other tobacco product shall be sold to individual customers from mobile vending motor vehicles and trailers that sell retail food products ready for immediate consumption.

(b) Cigarettes may be sold at hotdog stands and construction site food wagons by vendors who are licensed pursuant to § 47-2404.

(c) No single cigar containing reconstituted tobacco products shall be sold to individual customers at convenience stores and gas stations.

(d) Any person who violates subsection (a) of this section is guilty of a misdemeanor and, upon conviction, shall be fined not more than \$500 nor less than \$100, imprisoned not more than 30 days, or both, for the first offense. Any person convicted of a subsequent violation of subsection (a) of this section shall be fined not more than \$1,000 nor less than \$500, imprisoned not more than 90 days, or both.

(Feb. 7, 1891, 26 Stat. 736, ch. 117, § 7, as added July 23, 2010, D.C. Law 18-189, § 3(d), 57 DCR 3019.)

Legislative history of Law 18-189. — For Law 18-189, see notes following § 7-1721.01.

§ 7-1721.07. Civil penalties.

Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of §§ 7-1721.02, 7-1721.04, 7-1721.05, and 7-1721.06, or any rules or regulations issued under the authority of this subchapter for these sections, pursuant to Chapter 18 of Title 2 [§ 2-1801.01 et seq.]. Adjudication of any infraction of these sections shall be pursuant to Chapter 18 of Title 2 [§ 2-1801.01 et seq.].

(Feb. 7, 1891, 26 Stat. 736, ch. 117, § 8, as added July 23, 2010, D.C. Law 18-189, § 3(d), 57 DCR 3019.)

Legislative history of Law 18-189. — For Law 18-189, see notes following § 7-1721.01.

Subchapter II. Distribution of Free Cigarettes.

§ 7-1731. Distribution of free cigarettes prohibited; penalty.

(a) No person, agent, or employee of any person shall, in the course of doing business, distribute any free cigarettes or other tobacco product to any person

on any public street, public sidewalk, public park, playground, in a public building, other public property, or private property open to the public, except that free cigarettes or other tobacco products may be distributed at a tobacco store, a convention, or a conference catering to adults.

(b) Any person who violates subsection (a) of this section shall, upon conviction, be fined not less than \$250 for each violation.

(May 2, 1991, D.C. Law 8-262, § 5, 37 DCR 8434.)

Prior Codifications. — 1981 Ed., § 6-920.1.

Emergency legislation. — For temporary (90-day) requirement that certain manufacturers establish a reserve fund, see §§ 2 and 3 of the Tobacco Settlement Model Emergency Act of 1999 (D.C. Act 13-109, June 30, 1999, 46 DCR 5769).

For temporary (90-day) requirement that cer-

tain manufacturers establish a reserve fund, see §§ 2 and 3 of the Tobacco Settlement Model Congressional Review Emergency Act of 1999 (D.C. Act 13-139, September 28, 1999, 46 DCR 7963).

Legislative history of Law 8-262. — For legislative history of D.C. Law 8-262, see Historical and Statutory Notes following § 7-1703.02.

Subchapter III. Fire-Standard-Compliant Cigarettes.

§ 7-1751. Definitions.

For the purposes of this subchapter, the term:

(1) “Cigarette” means any product that contains any amount of nicotine, regardless of size, shape, or presence of other ingredients, that is intended to be burned or heated and consists of or contains any roll of tobacco wrapped in paper, or in any other substance other than tobacco, and because of its appearance, the type of tobacco used, and its packaging or labeling is offered to or purchased by consumers for smoking.

(2) “Consumer testing” means an assessment of cigarettes that is conducted by a manufacturer, or under the control and direction of a manufacturer, for the purpose of evaluating consumer acceptance of the cigarettes, utilizing only the quantity of cigarettes that is reasonably necessary for the assessment, and in a controlled setting where the cigarettes are either consumed on-site or returned to the testing administrators at the conclusion of the testing.

(3) “Fire-standard-compliant cigarette” means a cigarette that:

(A) Has been tested pursuant to this subchapter; and

(B) Has met the performance standard required by this subchapter.

(4) “Manufacturer” means any person or entity that manufactures or produces cigarettes or causes cigarettes to be manufactured or produced, whether in or outside the District, for sale in the District directly or through an importer, wholesale dealer, or retail dealer, including any first purchaser that intends to resell cigarettes.

(5) “Quality control and quality assurance program” means laboratory procedures implemented to ensure that operator bias, systematic and nonsystematic methodological errors, and equipment-related problems do not affect the results of the testing and that maintain a repeatability value of no greater than 0.19.

(6) “Repeatability” means the range of values within which the repeat results of cigarette test trials from a single laboratory will fall 95% of the time.

(7) “Retail dealer” means any person, other than a manufacturer or wholesale dealer, engaged in the sale of cigarettes.

(8) “Sale” or “selling” means any transfer of title or possession, or both, exchange or barter, conditional or otherwise, including the giving of cigarettes as samples, prizes, or gifts, and the exchange of cigarettes for any consideration.

(9) “Wholesale dealer” means any person, including a wholesale dealer’s agent, that sells cigarettes to retail dealers or other persons for resale, including any person that owns, operates, or maintains one or more cigarette vending machines in the District of Columbia.

(May 13, 2008, D.C. Law 17-157, § 2, 55 DCR 3703.)

Legislative history of Law 17-157. — Law 17-157 the “Fire-Standard-Compliant Cigarettes Act of 2008”, was introduced in Council and assigned Bill No. 17-373 which was referred to the Committee on Public Safety and Judiciary. The Bill was adopted on first and second readings on February 5, 2008, and March 4, 2008, respectively. Signed by the

Mayor on March 19, 2008, it was assigned Act No. 17-330 and transmitted to both Houses of Congress for its review. D.C. Law 17-157 became effective on May 13, 2008.

Editor’s notes. — Section 9 of D.C. Law 17-157 provided that sections 2 through 7 shall apply as of July 1, 2008.

§ 7-1752. Prohibition on sale of cigarettes that are not fire-standard-compliant.

No cigarette may be sold or offered for sale in the District of Columbia unless:

(1) It has been tested in accordance with the test method specified in § 7-1753(a)(2);

(2) It meets the performance standard required by § 7-1753(a)(4);

(3) The manufacturer has filed a written certification with the Mayor, or the Mayor’s delegate, in accordance with § 7-1754; and

(4) It has been marked in accordance with § 7-1754(b).

(May 13, 2008, D.C. Law 17-157, § 3, 55 DCR 3703.)

Legislative history of Law 17-157. — For Law 17-157, see notes following § 7-1751.

§ 7-1753. Test method and performance standard.

(a) The test method and performance standard for cigarettes sold or offered for sale in the District of Columbia shall include the following:

(1) A laboratory that conducts a test in accordance with this subsection shall implement a quality control and quality assurance program.

(2) Except as provided in subsection (b) of this section, the testing of cigarettes by manufacturers and the District of Columbia to determine compliance with this subchapter shall be conducted in accordance with the American Society of Testing and Materials (“ASTM”) “Standard Test Method

for Measuring the Ignition Strength of Cigarettes” (“ASTM Standard E2187-04”).

(3) The testing of cigarettes shall be conducted on 10 layers of filter paper.

(4) No more than 25% of the cigarettes tested in a test trial shall exhibit full-length burns.

(5) The performance standard required by this section shall only be applied to a complete test trial.

(6) Forty replicate tests shall comprise a complete test trial for each cigarette tested.

(b)(1) If the Mayor determines that cigarettes of a manufacturer cannot be tested in accordance with the test method described in subsection (a) of this section, the Mayor may approve a test method and performance standard proposed by the manufacturer, or other entity, that the Mayor determines are equivalent to and as effective as the test method and performance standard described in subsection (a) of this section.

(2) Following approval by the Mayor of an alternate test method and a determination by the Mayor that the performance standard proposed by the manufacturer, or other entity, is equivalent to the performance standard described in subsection (a) of this section, the manufacturer may use that test method to meet the performance standard required by this subchapter for certification pursuant to § 7-1754.

(c) Each cigarette listed in a certification submitted pursuant to § 7-1754 that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard set forth in this section shall have at least 2 nominally identical bands on the paper surrounding the tobacco column. At least one complete band shall be located at least 15 millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there shall be at least 2 bands fully located at least 15 millimeters from the lighting end and 10 millimeters from the filter end of the tobacco column, or 10 millimeters from the labeled end of the tobacco column for non-filtered cigarettes.

(May 13, 2008, D.C. Law 17-157, § 4, 55 DCR 3703.)

Legislative history of Law 17-157. — For Fire-Standard-Compliant Cigarettes Act of Law 17-157, see notes following § 7-1751. 2008, see Mayor’s Order 2008-90, June 23, 2008

Delegation of Authority. — Delegation of Authority pursuant to D.C. Law 17-157, the (55 DCR 9369).

§ 7-1754. Manufacturer’s certification.

(a)(1) Each manufacturer shall submit written certification to the Mayor attesting that its cigarettes have been tested in accordance with this subchapter and meet the performance standard required under § 7-1753.

(2) The submission shall include a description of each cigarette being certified, including the:

- (A) Brand;
- (B) Style;
- (C) Length in millimeters;

- (D) Circumference in millimeters;
- (E) Flavor, if applicable;
- (F) Filter or non-filter;
- (G) Package description, such as a soft pack or box; and
- (H) Mark required pursuant to subsection (b) of this section.

(3) Each cigarette certified under this subsection shall be recertified every 3 years.

(b)(1) Packaging for certified fire-standard-compliant cigarettes shall be marked in 8-point type or larger to indicate that the cigarettes have been tested using the test method and meet the performance standard required by this subchapter.

(2) The manufacturer shall use only one mark and the mark used shall consist of:

(A) The letters "FSC," which signify that the cigarette is fire-standard-compliant; or

(B) Any mark approved for sale in New York or another state that has enacted fire-standard-compliance standards for cigarettes that include the test method and performance standard specified in § 7-1753.

(May 13, 2008, D.C. Law 17-157, § 5, 55 DCR 3703; Mar. 25, 2009, D.C. Law 17-353, § 235, 56 DCR 1117.)

Effect of amendments. — D.C. Law 17-353 validated a previously made technical correction in subsec. (b)(2)(A).

Legislative history of Law 17-353. — For Law 17-353, see notes following § 7-161.

Legislative history of Law 17-157. — For Law 17-157, see notes following § 7-1751.

§ 7-1755. Manufacturer's data retention and availability requirements.

(a) A manufacturer shall:

(1) Retain all data from testing conducted on cigarettes that are offered for sale in the District of Columbia pursuant to this subchapter for 3 years; and

(2) Make the data available to the Mayor and the Attorney General for the District of Columbia upon written request to verify compliance with the performance standard required by this subchapter.

(b) Any manufacturer who fails to make copies of these reports available within 60 days of receiving a written request shall be subject to a penalty pursuant to § 7-1756 for each day after the 60th day that the manufacturer does not make the copies available.

(May 13, 2008, D.C. Law 17-157, § 6, 55 DCR 3703.)

Legislative history of Law 17-157. — For Law 17-157, see notes following § 7-1751.

§ 7-1756. Penalties and remedies.

(a)(1) A manufacturer or wholesale dealer who knowingly fails to comply with any of the provisions of this subchapter, or regulations promulgated

pursuant to this subchapter, shall be subject to a civil penalty not to exceed \$10,000 for each violation and not to exceed \$100,000 for all such violations during any 30-day period.

(2) A retail dealer who knowingly fails to comply with any of the provisions of this subchapter, or regulations promulgated pursuant to this subchapter, shall be subject to a civil penalty not to exceed \$5,000 for each violation and not to exceed \$25,000 for all such violations during any 30-day period.

(3) Each day of violation shall constitute a separate violation and, unless provided otherwise by regulation, the prescribed penalty shall be applicable to each separate violation.

(b) In addition to any penalty prescribed by subsection (a) of this section, any corporation, partnership, sole proprietor, limited partnership, or association engaged in the manufacture of cigarettes that knowingly makes a false certification pursuant to § 7-1754 shall be subject to a civil penalty of at least \$75,000 and not to exceed \$250,000 for each such false certification.

(c) In addition to any other remedy provided by law, the Attorney General for the District of Columbia may file a civil action in the Superior Court of the District of Columbia for a violation of this subchapter, which may include a petition for injunctive relief and the recovery of costs or damages.

(d)(1) Law enforcement personnel or duly authorized representatives of the Mayor may seize and take possession of cigarettes that have not been marked in the manner required by § 7-1754(b). The seized cigarettes shall be turned over to the Attorney General for the District of Columbia, and shall be forfeited to the District of Columbia.

(2) Cigarettes seized pursuant to this subsection shall be destroyed; provided, that before the destruction of any cigarette seized, the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarette.

(May 13, 2008, D.C. Law 17-157, § 7, 55 DCR 3703.)

Legislative history of Law 17-157. — For Law 17-157, see notes following § 7-1751.

§ 7-1757. Rules; limitations.

(a) No later than July 1, 2008, the Mayor, pursuant to subchapter I of Chapter 5 of Title 2, shall issue rules to implement the provisions of this subchapter, including regulations regarding the conduct of random inspections of wholesale and retail dealers to ensure compliance with this subchapter.

(b) This subchapter shall be implemented in accordance with the implementation and substance of the New York Fire Safety Standards for Cigarettes.

(c) Nothing in this subchapter shall be construed to prohibit:

(1) Wholesale dealers or retail dealers from continuing to sell, on or after July 1, 2008, non-fire-standard-compliant cigarettes that were part of their inventories existing on or before July 1, 2008, if the wholesale dealer or retail dealer can establish that:

(A) Tax stamps were affixed to the cigarettes before July 1, 2008; and

(B) The inventory was purchased before July 1, 2008 in comparable quantity to the inventory purchased during the same period of the prior year;

(2) The sale of cigarettes solely for the purpose of consumer testing; or

(3) Any person or entity from manufacturing or selling cigarettes that are or will be stamped for sale in one of the various states or are packaged for sale outside the United States and that person or entity has taken reasonable steps to ensure that the cigarettes will not be sold or offered for sale to persons located in the District of Columbia.

(May 13, 2008, D.C. Law 17-157, § 8, 55 DCR 3703.)

Legislative history of Law 17-157. — For Law 17-157, see notes following § 7-1751.

CHAPTER 18. TOBACCO MASTER SETTLEMENT AGREEMENT.

Subchapter I. Establishment of Reserve Fund by Tobacco Product Manufacturers Not Participating in the Master Settlement Agreement

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Subchapter I. Establishment of Reserve Fund by Tobacco Product Manufacturers Not Participating in the Master Settlement Agreement.

PART A.

DEFINITIONS AND REQUIREMENTS.

§ 7-1801.01. Definitions.

For the purpose of this subchapter, the term:

(1) "Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement.

(2) "Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms "owns," "is owned" and "ownership" mean ownership of an equity interest, or the equivalent thereof, of 10% or more, and the term "person" means an individual, partnership, committee, association, corporation, or any other organization or group of persons.

(3) "Allocable share" means Allocable Share as that term is defined in the Master Settlement Agreement.

(4) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (1) any roll of tobacco wrapped in paper or in any substance not containing

tobacco; or (2) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (3) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (1) of this definition. The term “cigarette” includes “roll-your-own” (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of “cigarette,” 0.09 ounces of “roll-your-own” tobacco shall constitute one individual “cigarette.”

(5) “Master Settlement Agreement” means the settlement agreement (and related documents) entered into on November 23, 1998 by the District of Columbia and leading United States tobacco product manufacturers.

(6) “Qualified escrow fund” means an escrow arrangement with a federally, District of Columbia or State chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least \$1,000,000,000 where such arrangement requires that such financial institution hold the escrowed funds’ principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing or directing the use of the funds’ principal except as consistent with § 7-1801.02(2)(B).

(7) “Released claims” means Released Claims as that term is defined in the Master Settlement Agreement.

(8) “Releasing parties” means Releasing Parties as that term is defined in the Master Settlement Agreement.

(9)(A) “Tobacco Product Manufacturer” means an entity that after June 30, 1999 directly (and not exclusively through any affiliate):

(i) Manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where the importer is an original participating manufacturer (as that term is defined in the Master Settlement Agreement) that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of section II(mm) of the Master Settlement Agreement and that pays the taxes specified in section II(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

(ii) Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(iii) Becomes a successor of an entity described in sub-subparagraphs (i) or (ii) of the subparagraph.

(B) The term “Tobacco Product Manufacturer” shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of subparagraph (A)(i)-(iii) of this paragraph.

(10) “Units sold” means the number of individual cigarettes sold in the District of Columbia by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the District of Columbia on packs (or “roll-your-own” tobacco containers) bearing the excise tax stamp of the District of Columbia. The Mayor shall promulgate such regulations as are necessary to ascertain the amount of District of Columbia excise tax paid on the cigarettes of such tobacco product manufacturer for each year.

(July 18, 2000, D.C. Law 13-139, § 2, 47 DCR 3426.)

Emergency legislation. — For temporary (90-day) addition of section, see § 2 of the Tobacco Settlement Model Congressional Review Emergency Act of 2000 (D.C. Act 13-341, May 9, 2000, 47 DCR 4661).

Legislative history of Law 13-139. — Law 13-139, the “Tobacco Settlement Model Act of 2000,” was introduced in Council and assigned

Bill No. 13-332, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on March 7, 2000, and April 4, 2000, respectively. Signed by the Mayor on April 20, 2000, it was assigned Act No. 13-321 and transmitted to both Houses of Congress for its review. D.C. Law 13-139 became effective on July 18, 2000.

§ 7-1801.02. Requirements.

Any tobacco product manufacturer selling cigarettes to consumers within the District of Columbia (whether directly or through a distributor, retailer, or similar intermediary or intermediaries) after June 30, 1999 shall do one of the following:

(1) Become a participating manufacturer (as that term is defined in section II(jj) of the Master Settlement Agreement) and generally perform its financial obligations under the Master Settlement Agreement; or

(2)(A) Place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation):

- (i) 1999: \$.0094241 per unit sold after June 30, 1999;
- (ii) 2000: \$.0104712 per unit sold;
- (iii) For each of 2001 and 2002: \$.0136125 per unit sold;
- (iv) For each 2003 through 2006: \$.0167539 per unit sold; and
- (v) For each of 2007 and each year thereafter: \$.0188482 per unit sold.

(B) A tobacco product manufacturer that places funds into escrow pursuant to subparagraph (A) of this paragraph shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances:

(i) To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the District of Columbia or any releasing party located or residing in the District of Columbia. Funds shall be released from escrow under this subparagraph in the order in which they were placed into escrow and only to the extent and at the time necessary to make payments required under such judgment or settlement;

(ii) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold

in the District of Columbia in a particular year was greater than the Master Settlement Agreement payments, as determined pursuant to section IX(i) of the Master Settlement Agreement, including after final determination of all adjustments that the manufacturer would have been required to make on account of such units sold had it been a participating manufacturer, the excess shall be released from escrow and revert back to the tobacco product manufacturer; or

(iii) To the extent not released from escrow under sub-subparagraphs (i) or (ii) of this subparagraph, funds shall be released from escrow and revert back to such tobacco product manufacturer 25 years after the date on which they were placed into escrow.

(C)(i) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this paragraph shall annually certify to the Chief Financial Officer of the District of Columbia that it is in compliance with this paragraph. The Corporation Counsel may bring a civil action on behalf of the District of Columbia against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall:

(I) Be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of this paragraph, may impose a civil penalty in an amount not to exceed 5% of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100% of the original amount improperly withheld from escrow;

(II) In the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of this paragraph, may impose a civil penalty in an amount not to exceed 15 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300% of the original amount improperly withheld from escrow; and

(III) In the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the District of Columbia (whether directly or through a distributor, retailer, or similar intermediary) for a period not to exceed 2 years.

(ii) Each failure to make an annual deposit required under this section shall constitute a separate violation.

(D) If the District of Columbia prevails in a civil suit brought under subparagraph (C) of this paragraph, it shall also be entitled to attorneys' fees, plus the costs of the action.

(July 18, 2000, D.C. Law 13-139, § 3, 47 DCR 3426; Oct. 18, 2005, D.C. Law 16-30, § 2, 52 DCR 8105.)

Effect of amendments. — D.C. Law 16-30 rewrote par. (2)(B)(ii) which had read as follows: "(ii) To the extent that a tobacco product manufacturer establishes that the amount it

was required to place into escrow in a particular year was greater than the District of Columbia's allocable share of the total payments that such manufacturer would have been required

to make in that year under the Master Settlement Agreement (as determined pursuant to section IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that Agreement other than the Inflation Adjustment) had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or”.

Emergency legislation. — For temporary (90-day) addition of section, see § 3 of the Tobacco Settlement Model Congressional Review Emergency Act of 2000 (D.C. Act 13-341, May 9, 2000, 47 DCR 4661).

Legislative history of Law 13-139. — For Law 13-139, see notes following § 7-1801.01.

Legislative history of Law 16-30. — Law 16-30, the “Tobacco Settlement Model Amendment Act of 2005”, was introduced in Council and assigned Bill No. 16-289 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 21, 2005, and July 6, 2005, respectively.

Signed by the Mayor on July 14, 2005, it was assigned Act No. 16-139 and transmitted to both Houses of Congress for its review. D.C. Law 16-30 became effective on October 18, 2005.

Editor’s notes. — Section 3 of D.C. Law 16-30 provided: “If this act, or any portion of the amendment to section 3(2)(B)(ii) made by this act, is held by a court of competent jurisdiction to be unconstitutional, then such section 3(2)(B)(ii) shall be deemed to be repealed in its entirety. If section 3(2)(B) shall thereafter be held by a court of competent jurisdiction to be unconstitutional, then this act shall be deemed repealed, and section 3(2)(B)(ii) be restored as if no such amendment had been made. Neither any holding of unconstitutionality nor the repeal of section 3(2)(B)(ii) shall affect, impair, or invalidate any other portion of the Tobacco Settlement Model Act of 2000, or the application of the Act to any other person or circumstance, and such remaining portions of the Act shall at all times continue in full force and effect.”

PART B.

MANUFACTURER’S RESERVE FUNDS PROCEDURE.

§ 7-1803.01. Findings and purpose.

The Council finds that violations of part A of this subchapter threaten the integrity of the tobacco Master Settlement Agreement, as defined in § 7-1801.01, the fiscal soundness of the District, and the public health and that enacting the procedural enhancements set forth in this part will aid in the enforcement of part A of this subchapter and thereby safeguard the Master Settlement Agreement, the fiscal soundness of the District, and the public health.

(Apr. 22, 2004, D.C. Law 15-150, § 2, 51 DCR 2809.)

Legislative history of Law 15-150. — Law 15-150, the “Tobacco Product Manufacturer Reserve Fund Complementary Procedures Act of 2004”, was introduced in Council and assigned Bill No. 15-406, which was referred to Committee of the Whole. The Bill was adopted on first

and second readings on January 6, 2004, and February 3, 2004, respectively. Signed by the Mayor on February 27, 2004, it was assigned Act No. 15-384 and transmitted to both Houses of Congress for its review. D.C. Law 15-150 became effective on April 22, 2004.

§ 7-1803.02. Definitions.

For the purposes of this part, the term:

(1) “Brand Family” means all styles of cigarettes sold under the same trademark and differentiated from one another by additional modifiers or descriptors, including “menthol,” “lights,” “kings,” and “100s,” and includes any brand name (alone or in conjunction with any other word), trademark, logo,

symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes.

(2) "Cigarette" has the same meaning as in § 7-1801.01(4).

(3) "Master Settlement Agreement" has the same meaning as in § 7-1801.01(5).

(4) "Non-participating Manufacturer" means any Tobacco Product Manufacturer that is not a Participating Manufacturer.

(5) "Participating Manufacturer" has the meaning given that term in Section II(jj) of the Master Settlement Agreement and all amendments to it.

(6) "Qualified Escrow Fund" has the same meaning as that term is defined in § 7-1801.01(6).

(7) "Tobacco Product Manufacturer" has the same meaning as that term is defined in § 7-1801.01(9).

(8) "Units Sold" has the same meaning as that term is defined in § 7-1801.01(10).

(9) "Wholesaler" means a wholesaler licensed under § 47-2404(b)(1).

(Apr. 22, 2004, D.C. Law 15-150, § 3, 51 DCR 2809.)

Legislative history of Law 15-150. — For Law 15-150, see notes following § 7-1803.01.

§ 7-1803.03. **Certifications; directory; tax stamps.**

(a) Every Tobacco Product Manufacturer whose cigarettes are sold in the District whether directly or through a wholesaler, retailer, or similar intermediary shall execute and deliver on a form prescribed by the Mayor, a certification to the Mayor, no later than the April 13th of each year, certifying under penalty of perjury that, as of the date of such certification, the Tobacco Product Manufacturer is a Participating Manufacturer or is in full compliance with § 7-1801.02(2), including all quarterly installment payments required by regulations promulgated pursuant to § 7-1803.05(e); and:

(1) A Participating Manufacturer shall include in its certification a list of its Brand Families, which shall be updated 30 days prior to any addition to or modification of its Brand Families by executing and delivering a supplemental certification to the Mayor.

(2)(A) A Non-Participating Manufacturer shall include in its certification the following information:

(i) A list of all of its Brand Families and the number of Units Sold for each Brand Family that were sold in the District during the preceding calendar year;

(ii) A list of all of its Brand Families that have been sold in the District at any time during the current calendar year;

(iii) Indicating, by an asterisk, any Brand Family sold in the District of Columbia during the preceding calendar year that is no longer being sold in the District of Columbia as of the date of such certification;

(iv) Identifying by name and address, any other manufacturer of such Brand Families in the preceding or current calendar year;

(v) That it is registered to do business in the District or has appointed a resident agent for service of process and provided notice thereof as required by § 7-1803.04;

(vi) That it has established and continues to maintain a Qualified Escrow Fund, and that it has executed a qualified escrow agreement, which shall govern the Qualified Escrow Fund, that has been reviewed and approved by the Mayor;

(vii) That it is in full compliance with § 7-1801.02(2), this part, and any regulations promulgated pursuant to part A of this subchapter and this part;

(viii) The name, address, and telephone number of the financial institution where the Non-Participating Manufacturer has established such Qualified Escrow Fund required pursuant to § 7-1801.02(2) and all regulations promulgated pursuant to part A of this subchapter;

(ix) The account number of the Qualified Escrow Fund and any sub-account number for the District;

(x) The amount the Non-Participating Manufacturer has placed in the fund for cigarettes sold in the District during the preceding calendar year, including the date and amount of each deposit, and such evidence or verification as may be deemed necessary by the Mayor to confirm this information; and

(xi) The amount and date of any withdrawal or transfer of funds the Non-Participating Manufacturer has made at any time from the fund or from any other Qualified Escrow Fund into which it ever made escrow payments pursuant to § 7-1801.02(2) and all regulations promulgated pursuant to part A of this subchapter.

(B) The Non-Participating Manufacturer shall update the lists required by this paragraph 30 calendar days prior to any addition to or modification of its Brand Families by executing and delivering a supplemental certification to the Mayor.

(3)(A) A Tobacco Product Manufacturer may not include a Brand Family in its certification unless:

(i) In the case of a Participating Manufacturer, the Participating Manufacturer affirms that the Brand Family is to be deemed to be its cigarettes for purposes of calculating its payments under the Master Settlement Agreement for the relevant year, in the volume and shares determined pursuant to the Master Settlement Agreement; and

(ii) In the case of a Non-Participating Manufacturer, the Non-Participating Manufacturer affirms that the Brand Family is to be deemed to be its cigarettes for purposes of part A of this subchapter.

(B) Nothing in this section shall be construed as limiting or otherwise affecting the District of Columbia's right to maintain that a Brand Family constitutes cigarettes of a different Tobacco Product Manufacturer for purposes of calculating payments under the Master Settlement Agreement or for purposes of § 7-1801.02(2).

(4) Tobacco Product Manufacturers shall maintain all invoices and documentation of sales and other such information relied upon for the required certification for a period of 5 years, unless required by law to maintain them for a greater period of time.

(b) Not later than 150 days after April 22, 2004, the Mayor shall develop and make available for public inspection a directory ("Directory") listing all Tobacco Product Manufacturers that have provided current and accurate certifications conforming to the requirements of subsection (a) of this section and of all Brand Families that are listed in the certifications; provided, that:

(1) The Mayor shall not include or retain in the Directory the name or Brand Families of any Non-Participating Manufacturer that has failed to provide the required certification or whose certification the Mayor determines is not in compliance with subsection (a)(2) of this section, unless the Mayor has determined that the violation has been cured to the satisfaction of the Mayor.

(2) Neither a Tobacco Product Manufacturer nor Brand Family shall be included or retained in the Directory if the Mayor concludes, in the case of a Non-Participating Manufacturer, that:

(A) Any escrow payment required pursuant to § 7-1801.02(2) for any period for any Brand Family, whether or not listed by such Non-Participating Manufacturer, has not been fully paid into a Qualified Escrow Fund governed by a qualified escrow agreement that has been approved by the Mayor; or

(B) Any outstanding final judgment, including interest, for a violation of § 7-1801.02(2) has not been fully satisfied for the Brand Family or the manufacturer.

(3)(A) The Mayor shall update the Directory as necessary in order to correct mistakes and to add or remove a Tobacco Product Manufacturer or Brand Family to keep the Directory in conformity with the requirements of this part and shall post in the Directory notice of any removal from the Directory of a Tobacco Product Manufacturer or Brand Family at least 30 days prior to removal from the Directory of the Tobacco Product Manufacturer or Brand Family; and unless otherwise provided by agreement between:

(i) A Wholesaler and a Tobacco Product Manufacturer, the Wholesaler shall be entitled to a refund from a Tobacco Product Manufacturer for any money paid by the Wholesaler to the Tobacco Product Manufacturer for any cigarettes of the Tobacco Product Manufacturer in the possession of the Wholesaler on the effective date of removal from the Directory, or as subsequently received from a retail dealer as provided herein, of that Tobacco Product Manufacturer or Brand Family of cigarettes.

(ii) A retail dealer and a Wholesaler, a retail dealer shall be entitled to a refund from a Wholesaler or a Tobacco Product Manufacturer for any money paid by the retail dealer to such Wholesaler or Tobacco Product Manufacturer for any cigarettes of the Tobacco Product Manufacturer still in the possession of the retail dealer on the effective date of removal from the Directory of that Tobacco Product Manufacturer or Brand Family of cigarettes.

(B) The Mayor shall not restore to the Directory the Tobacco Product Manufacturer or the Brand Family until the Tobacco Product Manufacturer has paid the Wholesaler or retail dealer any refund due.

(4) Every Wholesaler shall provide and update as necessary an electronic mail address to the Mayor for the purpose of receiving any notifications as may be required by this part.

(c) It shall be unlawful for any person to:

(1) Affix a stamp to a package or other container of cigarettes of a Tobacco Product Manufacturer or Brand Family not included in the Directory, or

(2) Sell, offer, or possess for sale, in the District, or import for personal consumption in the District, cigarettes of a Tobacco Product Manufacturer or Brand Family not included in the Directory.

(Apr. 22, 2004, D.C. Law 15-150, § 4, 51 DCR 2809.)

Legislative history of Law 15-150. — For Law 15-150, see notes following § 7-1803.01.

§ 7-1803.04. Agent for service of process.

(a)(1) Any non-resident or foreign Non-Participating Manufacturer that has not registered to do business in the District as a foreign corporation or business entity shall, prior to having its Brand Families included or retained in the Directory, appoint and continually engage without interruption the services of an agent in the District to act as agent for the service of process on whom all process, and any action or proceeding against it concerning or arising out of the enforcement of this part or part A of this subchapter, may be served in any manner authorized by law and which shall constitute legal and valid service of process on the Non-Participating Manufacturer.

(2) The Non-Participating Manufacturer shall provide the name, address, phone number, and proof of the appointment and availability of the agent to, and to the satisfaction of, the Mayor.

(b)(1) The Non-Participating Manufacturer shall provide notice to the Mayor 30 calendar days prior to termination of the authority of an agent and shall further provide proof, to the satisfaction of the Mayor, of the appointment of a new agent no less than 5 calendar days prior to the termination of an existing agent appointment.

(2) If an agent terminates an agency appointment, the Non-Participating Manufacturer shall notify the Mayor of the termination within 5 calendar days and shall include proof, to the satisfaction of the Mayor, of the appointment of a new agent.

(Apr. 22, 2004, D.C. Law 15-150, § 5, 51 DCR 2809.)

Legislative history of Law 15-150. — For Law 15-150, see notes following § 7-1803.01.

§ 7-1803.05. Reporting of information; escrow installments.

(a) Not later than 20 calendar days after the end of each calendar quarter, and more frequently if so directed by the Mayor, each Wholesaler shall submit such information as the Mayor requires to facilitate compliance with this part, including a list, by Brand Family, of the total number of cigarettes, or, in the case of roll your own, the equivalent stick count, for which the Wholesaler affixed stamps during the previous calendar quarter or otherwise paid the tax due for such cigarettes. The Wholesaler shall maintain, and make available to

the Mayor, all invoices and documentation of sales of all Non-Participating Manufacturer cigarettes and any other information relied upon in reporting to the Mayor for a period of 5 years.

(b) The Corporation Counsel is authorized to disclose any information to the Mayor received under this part and requested by the Mayor for purposes of determining compliance with and enforcing the provisions of this part. The Corporation Counsel and the Mayor shall share with each other the information received under this part, and may share such information with other federal, state, District, or local agencies only for purposes of enforcement of this part, part A of this subchapter, or corresponding laws of other jurisdictions.

(c) The Mayor may require, at any time, from the Non-Participating Manufacturer, proof from the financial institution in which the Manufacturer has established a Qualified Escrow Fund, for the purpose of compliance with § 7-1801.02(2), of the amount of money in the fund, exclusive of interest, the amount and date of each deposit to the fund, and the amount and date of each withdrawal from the fund.

(d) In addition to the information required to be submitted pursuant to this part, the Mayor may require a Wholesaler or Tobacco Product Manufacturer to submit any additional information, including samples of the packaging or labeling of each Brand Family, as is necessary to enable the Mayor to determine whether a Tobacco Product Manufacturer is in compliance with this part.

(e) To promote compliance with this part, the Mayor may promulgate regulations requiring a Tobacco Product Manufacturer, subject to the requirements of § 7-1803.03(a)(2), to make the escrow deposits required in quarterly installments during the year in which the sales covered by such deposits are made. The Mayor may require production of information sufficient to enable the Mayor to determine the adequacy of the amount of the installment deposit.

(Apr. 22, 2004, D.C. Law 15-150, § 6, 51 DCR 2809.)

Legislative history of Law 15-150. — For Law 15-150, see notes following § 7-1803.01.

§ 7-1803.06. Penalties and other remedies.

(a)(1) In addition to, or in lieu of, any other civil or criminal remedy provided by law, upon a determination that any person has violated § 7-1803.03(c) or any regulation adopted pursuant to this part, the Mayor may revoke or suspend the license of the Wholesaler in the manner provided by § 47-2404(f).

(2) Each stamp affixed and each sale or offer to sell cigarettes in violation of § 7-1803.03(c) shall constitute a separate violation. Pursuant to Chapter 18 of Title 2, the Mayor may also impose a civil fine in an amount not to exceed the greater of 500% of the retail value of the cigarettes or \$5,000 for any violation of § 7-1803.03(c) or any regulations adopted pursuant to this part.

(b) Any cigarettes that have been sold, offered for sale, or possessed for sale, in the District, or imported for personal consumption in the District, in violation of § 7-1803.03(c) shall be deemed contraband under § 47-2405(b)

and the cigarettes shall be subject to seizure and forfeiture as provided in § 47-2409; provided, that all such cigarettes so seized and forfeited shall be destroyed and not resold.

(c) The Corporation Counsel, on behalf of the District, may seek an injunction to restrain a threatened or actual violation of § 7-1803.03(c), § 7-1803.05(a), or § 7-1803.05(d) by a Wholesaler and compel the Wholesaler to comply with the subsections.

(d)(1) It shall be unlawful for a person to:

(A) Sell or distribute cigarettes, or

(B) Acquire, hold, own, possess, transport, import, or cause to be imported cigarettes that the person knows or should know are intended for distribution or sale in the District in violation of § 7-1803.03(c).

(2) A violation of this subsection shall, upon conviction, be punishable by a fine of not more than \$5,000 or imprisonment of not more than 1 year, or both. Prosecutions for violations of this subsection shall be brought in Superior Court of the District of Columbia in the name of the District by the Corporation Counsel.

(Apr. 22, 2004, D.C. Law 15-150, § 7, 51 DCR 2809.)

Legislative history of Law 15-150. — For Law 15-150, see notes following § 7-1803.01.

§ 7-1803.07. Miscellaneous provisions.

(a) A determination of the Mayor to not include or to remove from the Directory a Brand Family or Tobacco Product Manufacturer shall be subject to review in the manner prescribed by subchapter I of Chapter 5 of Title 2.

(b) No person shall be issued a license or granted a renewal of a license to act as a Wholesaler unless that person has certified in writing, under penalty of perjury, that he or she will comply fully with this part.

(c) The first report of Wholesalers required by § 7-1803.05(a) shall be due 45 calendar days after April 22, 2004; the certifications by a Tobacco Product Manufacturer described in § 7-1803.03(a) shall be due 45 calendar days after April 22, 2004; and the Directory described in § 7-1803.03(b) shall be published or made available within 150 calendar days after April 22, 2004.

(d) The Mayor may promulgate regulations necessary to effect the purposes of this part.

(e) In any action brought by the District to enforce this part, the District shall be entitled to recover the costs of investigation, expert witness fees, costs of the action, and reasonable attorney fees.

(f) If a court determines that a person has violated this part, the court shall order any profits, gain, gross receipts, or other benefit derived from the violation to be disgorged and paid to the District. Unless otherwise expressly provided, the remedies or penalties provided by this part are cumulative to each other and to the remedies or penalties available under all other laws of the District.

(g)(1) If a court of competent jurisdiction finds that the provisions of this

part and of part A of this subchapter conflict and cannot be harmonized, then the provisions of part A of this subchapter shall control.

(2)(A) If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this part causes part A of this subchapter to no longer constitute a Qualifying or Model Statute, as those terms are defined in the Master Settlement Agreement, then that portion of this part shall not be valid.

(B) If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this part is for any reason held to be invalid, unlawful, or unconstitutional, that holding shall not affect the validity of the remaining portions of this part or any part of this part.

(Apr. 22, 2004, D.C. Law 15-150, § 8, 51 DCR 2809; Apr. 13, 2005, D.C. Law 15-354, § 16, 52 DCR 2638.)

Effect of amendments. — D.C. Law 15-534, in subsec. (g)(2)(A), validated a previously made technical correction.

Legislative history of Law 15-150. — For Law 15-150, see notes following § 7-1803.01.

Legislative history of Law 15-354. — Law 15-354, the “Technical Amendments Act of 2004”, was introduced in Council and assigned

Bill No. 15-1130 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 7, 2004, and December 21, 2004, respectively. Signed by the Mayor on February 9, 2005, it was assigned Act No. 15-770 and transmitted to both Houses of Congress for its review. D.C. Law 15-354 became effective on April 13, 2005.

Subchapter II. Tobacco Settlement Trust Fund.

§ 7-1811.01. Establishment of Tobacco Settlement Trust Fund.

(a)(1) There is established a trust fund designated as the Tobacco Settlement Trust Fund (“Fund”), to which shall be credited, without regard to fiscal year limitation:

(A) All revenue owed and accruing to the District from the payments under the tobacco litigation settlement agreement entered into on November 23, 1998 by the District of Columbia and leading United States tobacco product manufacturers (“Settlement Agreement”), except:

(i) The first \$16.05 million recognized as general fund revenue and already included in the base budget in Fiscal Year 2000;

(ii) All payments under the Settlement Agreement sold to the District of Columbia Tobacco Settlement Financing Corporation under § 7-1831.02; and

(iii) All payments under the Residual Bond sold to the District of Columbia Tobacco Settlement Financing Corporation under § 7-1831.02;

(B) If the Residual Bond has not been sold by the Fund, all payments received with respect to the Residual Interest, as the term is defined in § 7-1831.01(7);

(B-i) If the Residual Bond has been sold by the Fund, all payments received under the Remainder Certificate, if any; and

(C) All other funds which are directed to be deposited into the Fund by law, which shall include funds to be deposited into a Reservation 13 Benefit

Area ("R13BA") Health Care account ("R13BA fund") pursuant to Chapter 15 of Title 10.

(2) The Fund shall be continuing. Revenues deposited into the Fund shall not revert to the General Fund at the end of any fiscal year or at any other time, but shall be continually available, subject to authorization by Congress in an appropriations act.

(b) The Fund shall be managed by the Board of Trustees of the Tobacco Settlement Trust Fund established under § 7-1811.02.

(c) The Fund shall have the power to indemnify or insure members of the board and officers of the Fund as it determines appropriate.

(Oct. 20, 1999, D.C. Law 13-38, § 2302, 46 DCR 6373; Oct. 19, 2000, D.C. Law 13-172, § 3721(a), 47 DCR 6308; Apr. 11, 2003, D.C. Law 14-300, § 7(b)(1), 50 DCR 406; Feb. 6, 2004, D.C. Law 15-69, § 3(a), 50 DCR 9824; Apr. 13, 2005, D.C. Law 15-354, § 89(b), 52 DCR 2638; July 25, 2006, D.C. Law 16-142, § 2(a), 53 DCR 4412; Mar. 25, 2009, D.C. Law 17-353, § 119, 56 DCR 1117.)

Effect of amendments. — D.C. Law 13-172 rewrote this section, which previously read:

"Establishment of Tobacco Settlement Trust Fund.

"(a) There is established within the General Fund of the District of Columbia, a trust fund designated as the Tobacco Settlement Trust Fund ('Fund'), to which shall be credited, without regard to fiscal year limitation, all revenue owed and accruing to the District from the proceeds of the tobacco litigation settlement, except for the first \$16.05 million recognized as general fund revenue and already included in the base budget in FY 2000, and except for the second \$16.05 million which is allocated first to the reserve to replace funds allocated from the reserve to the fund pursuant to title XX of this act. The Fund shall be continuing. Revenues deposited into the Fund shall not revert to the General Fund at the end of any fiscal year or at any other time, but shall be continually available, subject to authorization by Congress in an appropriations act.

"(b) Tobacco settlement monies received, or deposited into the Fund shall be used for the purposes set forth in legislation adopted by the Council."

D.C. Law 14-300, in subsec. (a)(1)(C), substituted "by law, which shall include funds to be deposited into a Reservation 13 Benefit Area ('R13BA') Hospital account or R13BA Health Care account (collectively, 'R13BA funds') pursuant to Chapter 15 of Title 10" for "by law."

D.C. Law 15-69, in subpar. (1)(C) of subsec. (a), substituted "Health Care account ('R13BA fund') for "Hospital account or R13BA Health Care account (collectively, 'R13BA funds')", and made a technical correction that required no change in the text.

D.C. Law 15-354, in subsec. (a)(1)(C), validated a previously made technical correction.

D.C. Law 16-142, in subpar. (a)(1)(A)(i), substituted a semicolon for "; and"; in subpar. (a)(1)(A)(ii), substituted "§ 7-1831.02; and" for "§ 7-1831.02;"; added subpars. (a)(1)(A)(iii) and (a)(1)(B-i); added subsec. (c); and rewrote subpar. (a)(1)(B), which had read as follows: "(B) All payments received with respect to the Residual Interest, as the term is defined in § 7-1831.01(7); and"

D.C. Law 17-353 validated a previously made technical correction in subsec. (a)(1)(B).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(d)(1) of Draft Master Plan for Public Reservation 13 Temporary Amendment Act of 2003 (D.C. Law 15-3, May 3, 2003, law notification 50 DCR 3783).

Emergency legislation. — For temporary (90-day) addition of section, see § 2302 of the Service Improvement and Fiscal Year 2000 Budget Support Emergency Act of 1999 (D.C. Act 13-110, July 28, 1999, 46 DCR 6320).

For temporary (90-day) amendment of section, see § 3721(a) of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90-day) authorization for use of fund for certain bonus payments, see § 2 of the Funding for Compensation Units 1 and 2 Bonus Payment Authorization Emergency Act of 1999 (D.C. Act 13-211, December 14, 1999, 46 DCR 10476).

For temporary (90 day) amendment of section, see § 3721(a) of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

For temporary (90 day) amendment of section, see § 2(d)(1) of Draft Master Plan for Public Reservation 13 Emergency Amendment Act of 2003 (D.C. Act 15-13, January 27, 2003, 50 DCR 1488).

For temporary (90 day) amendment of section, see § 3(a) of Draft Master Plan for Public Reservation 13 Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-273, December 18, 2003, 51 DCR 40).

Legislative history of Law 13-38. — Law 13-38, the “Service Improvement and Fiscal Year 2000 Budget Support Act of 1999,” was introduced in Council and assigned Bill No. 13-161, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 11, 1999, and June 22, 1999, respectively. Signed by the Mayor on July 8, 1999, it was assigned Act No. 13-111 and transmitted to both Houses of Congress for its review. D.C. Law 13-38 became effective on October 20, 1999.

Legislative history of Law 13-172. — Law 13-172, the “Fiscal Year 2001 Budget Support Act of 2000,” was introduced in Council and assigned Bill No. 13-679, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 18, 2000, and June 6, 2000, respectively. Signed by the Mayor on June 26, 2000, it was assigned Act No. 13-375 and transmitted to both Houses of Congress for its review. D.C. Law 13-172 became effective on October 19, 2000.

Legislative history of Law 14-300. — Law 14-300, the “Draft Master Plan for Public Reservation 13 Approval Act of 2002,” was introduced in Council and assigned Bill No. 14-648, which was referred to the Committee on the Whole. The Bill was adopted on first and second readings on November 7, 2002, and December 3, 2002, respectively. Signed by the Mayor on

January 7, 2003, it was assigned Act No. 14-576 and transmitted to both Houses of Congress for its review. D.C. Law 14-300 became effective on April 11, 2003.

Legislative history of Law 15-69. — Law 15-69, the “Draft Master Plan For Public Reservation 13 Amendment Act of 2003,” was introduced in Council and assigned Bill No. 15-24, which was referred to Committee of the Whole. The Bill was adopted on first and second readings on July 8, 2003, and October 7, 2003, respectively. Signed by the Mayor on October 24, 2003, it was assigned Act No. 15-198 and transmitted to both Houses of Congress for its review. D.C. Law 15-69 became effective on February 6, 2004.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 7-1803.07.

Legislative history of Law 16-142. — Law 16-142, the “Tobacco Settlement Trust Fund and Tobacco Settlement Financing Amendment Act of 2006,” was introduced in Council and assigned Bill No. 16-605 which was referred to the Committee on the Whole. The Bill was adopted on first and second readings on April 4, 2006, and May 2, 2006, respectively. Signed by the Mayor on May 19, 2006, it was assigned Act No. 16-383 and transmitted to both Houses of Congress for its review. D.C. Law 16-142 became effective on July 25, 2006.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 7-161.

Short title. — Section 2301 of D.C. Law 13-38 provided: “This title may be cited as the ‘Tobacco Settlement Trust Fund Establishment Act of 1999.’”

§ 7-1811.02. Board of Trustees of the Tobacco Settlement Trust Fund.

(a) The Board of Trustees of the Tobacco Settlement Trust Fund (“Board”) is established as an independent agency of the District government. The Board shall consist of 3 members. One member shall be appointed by the Council. The other 2 members shall be nominated by the Mayor and approved by the Council and one of those 2 members shall be nominated by the Mayor as chairperson. Within 90 calendar days after October 19, 2000, or 180 days after the date of a vacancy, the Mayor shall transmit to the Council, for a 90-day period of review, excluding days of Council recess, the nominations to the Board. If the Council does not approve a nomination by resolution within the 90-day period, the nomination shall be deemed disapproved.

(b)(1) Except as provided in paragraph (2) of this subsection, the members of the Board shall each serve a term of 4 years, except that a member selected to fill a vacancy occurring before the end of the term for which his predecessor was selected shall only serve until the end of the term. A member may serve after the expiration of his term until his successor has taken office.

(2) The member of the Board first selected by the Council shall serve for a term of 2 years. As determined by the Mayor in his initial nominations, of the

members of the Board who are first selected from his nominees, one shall serve for a term of 3 years and one shall serve for a term of 4 years.

(3) An individual shall not serve more than 2 terms as a member of the Board, except that an individual serving less than 2 years of a term to which some other individual was originally selected shall be eligible for an additional 2 full terms as a member of the Board and an individual serving 2 years or more of a term to which some other individual was originally selected shall be eligible for only one additional full term as a member of the Board.

(4) A member of the Board shall not have any personal interest, direct or indirect, in a transaction involving assets of the Fund.

(c) Subject to the availability of appropriations for that purpose, each member of the Board shall be entitled to receive the hourly equivalent of the annual rate of compensation effect for the highest step of grade DS-15 under Chapter 6 of Title 1, for each hour that the member is engaged in the actual performance of duties vested in the Board, except that a member of the Board who is a full-time officer or employee of the District of Columbia or the United States shall not be entitled to receive compensation under this subsection for performance of duties vested in the Board during the employee's regularly scheduled working hours, and the total amount to which a member may be entitled under this subsection during a fiscal year may not exceed \$5,000.

(d) Once funds are deposited into the Fund, the Board shall meet at least once each calendar year at a regular and specified time. It shall meet at such other times as the Chairperson may prescribe. Actions of the Board shall be determined by a majority vote of the members.

(e)(1) All administrative expenses incurred by the Board in administering the Fund, including compensation for the members of the Board, shall be paid out of funds appropriated for such purpose.

(2) The budget prepared and submitted by the Mayor under § 47-301.01 shall include recommended expenditures at a reasonable level for the forthcoming fiscal year for the administrative expenses of the Board, except that the recommended expenditures for the administrative expenses for Fiscal Year 2004 shall not exceed \$10,000.00.

(f)(1) Subject to appropriations, the Board may engage the services of investment counsel, who shall be either: (A) registered under title 11 of An Act to provide for the registration and regulation of investment companies and investment advisers (54 Stat. 847; 15 U.S.C. § 80b-I et seq.) ("Investment Advisers Act of 1940"); (B) a bank, as defined in the Investment Advisers Act of 1940; or (C) an insurance company qualified to perform investment advisory services under the laws of more than one state. The investment counsel shall be a fiduciary with respect to services rendered to the Board. The fiduciary relationship shall be specified in a written agreement.

(2) Subject to appropriations, the Board may appoint staff it considers necessary or convenient to carry out its functions. Staff appointed by the Board shall be subject to Chapter 6 of Title 1.

(g)(1) The Board shall have the authority to enter into contracts with the governments of the District of Columbia and the United States and other public and private entities to the extent necessary to carry out its responsibilities.

(2) The Board shall issue proposed rules governing the procurement of goods and services under the authority granted in paragraph (1) of this subsection. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(3) The Board may adopt, amend, repeal, and enforce bylaws or other operating procedures as appropriate in accordance with District laws.

(h)(1) In addition to an investment otherwise authorized by law, and without restriction to investments a fiduciary may make, the Board, subject to any specific limitations set forth in this section or applicable law other than law relating to investments a fiduciary may make, may invest and reinvest the funds of the Fund in any real or personal property deemed advisable by the Board, including mortgages, stocks, bonds, debentures, and other securities of profit or nonprofit corporations, shares in or obligations of associations, partnerships, or individuals, and obligations of any government or subdivision or instrumentality thereof.

(2) The Board shall submit reports of the investment performance of and financial transactions related to the Fund to the Council within 90 days after the end of the fiscal year, including a listing of the assets of the Fund, the earnings of each asset of the Fund, the value of each asset of the Fund at the beginning and end of the fiscal year, and the investment strategy of the Fund, including any proposed changes.

(Oct. 20, 1999, D.C. Law 13-38, § 2302a, as added Oct. 19, 2000, D.C. Law 13-172, § 3721(b), 47 DCR 6308; June 5, 2003, D.C. Law 14-307, § 402(a), 49 DCR 11664; Nov. 13, 2003, D.C. Law 15-39, § 1504(a), 50 DCR 5668; Oct. 20, 2005, D.C. Law 16-33, § 1036, 52 DCR 7503; July 25, 2006, D.C. Law 16-142, § 2(b), 53 DCR 4412.)

Effect of amendments. — D.C. Law 15-39, in subsec. (e)(2), substituted “Fiscal Year 2004 shall not exceed \$10,000.” for “fiscal year 2003 shall not exceed \$1,000.”

D.C. Law 14-307 rewrote subsec. (e)(2); in subsec. (g), added par. (3); and rewrote subsec. (h)(2).

D.C. Law 16-33, in subsec. (d), substituted “Once funds are deposited into the Fund, the Board shall meet” for “The Board shall meet”.

D.C. Law 16-142, in subsec. (d), substituted “year” for “quarter”.

Emergency legislation. — For temporary (90-day) addition of section, see § 3721(b) of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see § 3721(b) of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

For temporary (90 day) amendment of section, see § 402(a) of Fiscal Year 2003 Budget Support Amendment Emergency Act of 2002 (D.C. Act 14-544, December 4, 2002, 49 DCR 11700).

For temporary (90 day) amendment of section, see § 402(a) of the Fiscal Year 2003 Budget Support Amendment Congressional Review Emergency Act of 2003 (D.C. Act 15-27, February 24, 2003, 50 DCR 2151).

For temporary (90 day) amendment of section, see § 402(a) of Fiscal Year 2003 Budget Support Amendment Second Congressional Review Emergency Act of 2003 (D.C. Act 15-103, June 20, 2003, 50 DCR 5499).

For temporary (90 day) amendment of section, see § 1504(a) of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) amendment of section, see § 1504(a) of Fiscal Year 2004 Budget Support Congressional Review Emergency Act

of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

For temporary (90 day) amendment of section, see § 1036 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 13-38. — For Law 13-38, see notes following § 7-1811.01.

Legislative history of Law 13-172. — For Law 13-172, see notes following § 7-1811.01.

Legislative history of Law 14-307. — For Law 14-307, see notes following § 7-225.

Legislative history of Law 15-39. — For Law 15-39, see notes following § 7-732.

Legislative history of Law 16-33. — For Law 16-33, see notes following § 7-733.01.

Legislative history of Law 16-142. — For Law 16-142, see notes following § 7-1811.01.

Short title. — Short title of subtitle H of title I of Law 16-33: Section 1035 of D.C. Law 16-33 provided that subtitle H of title I of the act may be cited as the Tobacco Settlement Trust Fund Board of Trustees Meetings Amendment Act of 2005.

Editor's notes. — Section 1505 of D.C. Law 15-39 provided: "Sec. 1505. Applicability. Section 1504(a) shall apply as of October 1, 2003."

§ 7-1811.03. Allocation of funds.

(a)(1) Beginning in Fiscal Year 2001, the funds which shall be appropriated and deposited in the Fund shall be allocated and used as provided in subsection (b) of this section.

(2) Within 15 business days of the sale of the District's right in and to the Master Settlement Agreement to the District of Columbia Tobacco Financing Settlement Corporation under § 7-1831.02, the Chief Financial Officer shall certify, for each year, the debt service savings that the District will achieve as a result of the sale.

(3) Beginning in Fiscal Year 2002, the Chief Financial Officer shall certify to the Council that the Mayor has included in the budget and financial plan the transfer to the Fund in the amount of the savings for that year.

(4) The amount of the savings which are appropriated for deposit into the Fund shall be deposited into the Fund in equal quarterly installments which shall be paid at the end of each quarter of the fiscal year.

(b) The funds of the Fund shall be used as follows:

(1) Fifty percent of the sum of the residual interest plus the annual savings from debt defeasance or prepayment shall be spent for purposes specified in local law;

(2) Fifty percent of the sum of the residual interest plus the annual savings from debt defeasance or prepayment shall be invested by the Board in accordance with the standards of § 7-1811.02(h)(1);

(3) All of the investment earnings of the Fund shall be reinvested by the Board in accordance with the standards of § 7-1811.02(h)(1);

(4) Any funds not spent in accordance with paragraph (1) of this subsection shall be invested in accordance with paragraph (2) of this subsection;

(5)(A) All residual funds accumulated from fiscal years 2001 and 2002 shall be allocated to the General Fund during Fiscal Year 2003. Beginning October 1, 2002 through September 30, 2004, 100% of the residual shall be spent for purposes specified in local law. For Fiscal Year 2003, 100% of the residual shall be transferred to the General Fund, and 100% of the annual savings from debt defeasance and prepayment, after being reduced by \$1 million to be allocated to the General Fund, shall be allocated to the Medicaid and Special Education Reform Fund ("Reform Fund") established by § 4-204.53. For Fiscal Year 2004, 100% of the residual shall be transferred to the

General Fund, and 100% of the annual savings from debt defeasance and prepayment shall be allocated to the Reform Fund. Funds deposited in the Reform Fund shall be disbursed to the Department of Human Services, the Child and Family Services Agency, the Department of Mental Health, the Department of Health, and the District of Columbia Public Schools only for spending pressures associated with the Medicaid, Medicare, Foster Care and Adoption Assistance, and Special Education programs and in accordance with § 4-204.55. For fiscal year 2005, 100% of the residual and 100% of the annual savings from debt defeasance and prepayment shall be transferred to the General Fund. Commencing in fiscal year 2006, 100% of the residual (unless the Residual Bond has been sold) and 100% of the annual savings from debt defeasance and prepayment shall be transferred to the General Fund. Unless the Residual Bond has been sold by the Fund, the Council may direct all or a portion of the residual to be transferred to the Fund.

(B) For the purposes of this paragraph, the term:

(i) "Foster Care and Adoption Assistance" means the programs authorized by Part E of Title IV of the Social Security Act, approved June 17, 1980 (94 Stat. 501; 42 U.S.C. § 670 et seq.).

(ii) "Medicaid" means the medical assistance programs authorized by Title XIX of the Social Security Act, approved July 30, 1965 (79 Stat. 343; 42 U.S.C. § 1396 et seq.), or by § 1-307.02, and administered by the Department of Health.

(iii) "Medicare" means the health insurance programs authorized by Title XVIII of the Social Security Act, approved July 30, 1965 (79 Stat. 290; 42 U.S.C. § 1395 et seq.).

(iv) "Special Education" means services provided under § 38-2501 [repealed] to students who are classified as having a disability, as defined in section 101(a)(1) of the Individuals with Disabilities Education Act, approved April 13, 1970 (84 Stat. 175; 20 U.S.C. § 1401(a)(1)), or in section 7(8) of the Rehabilitation Act of 1973, approved September 26, 1973 (87 Stat. 359; 29 U.S.C. § 706(8)).

(6) Beginning October 1, 2002, \$16,627,000 of programming funds shall be reinvested by the Board.

(7) If the Residual Bond has been sold by the Fund, 100% of the residual shall be payable to the Corporation for so long as the Bonds issued to purchase the Residual Bond are Outstanding.

(c) The R13BA fund, including all accrued interest, shall be used as follows:

(1) To fund infrastructure improvements related to a proposed development within the R13BA;

(2) To provide health care to the uninsured residents of the District; and

(3) For administrative support in the provision of health care to the uninsured.

(d) For the purpose of financing the costs of the National Capital Medical Center, healthcare related issues, or other capital projects, and repayment of outstanding indebtedness issued for certain capital projects and other undertakings of the District, the Fund may sell to the Corporation all of the Fund's right, title, and interest in and to the Residual Bond, including all the moneys, and any interest thereon, payable to or received by the Fund, in exchange for:

(1) A cash payment in the amount of the net sales proceeds of the Bonds (other than the Residual Bond); and

(2) The Remainder Certificate, if any.

(e) Subject to the authorization and restrictions of this subchapter, the terms and conditions of the Residual Bond Purchase Agreement shall be determined by the Mayor, which determination shall be conclusively evidenced by his execution of the Residual Bond Purchase Agreement. The Mayor may execute and deliver any administrative or other documents or agreements that are necessary or desirable relating to the sale of the Fund's right, title, and interest in and to the Residual Bond or in connection with the issuance of the Bonds. Proceeds from the sale of the Bonds and other moneys received by the Corporation pursuant to the Residual Bond Purchase Agreement shall be used to repay certain outstanding indebtedness of the District, to finance or refinance the National Capital Medical Center, healthcare related issues, or other capital projects or undertakings of the District, to pay costs of issuance of the Bonds, to establish and fund reserve funds, and to pay other expenses and fees related to the issuance of the Bonds.

(Oct. 20, 1999, D.C. Law 13-38, § 2303b, as added Oct. 19, 2000, D.C. Law 13-172, § 3721(c), 47 DCR 6308; Oct. 1, 2002, D.C. Law 14-190, § 702, 49 DCR 6968; Apr. 11, 2003, D.C. Law 14-300, § 7(b)(2), 50 DCR 406; June 5, 2003, D.C. Law 14-307, § 402(b), 49 DCR 11664; June 12, 2003, D.C. Law 14-310, § 5, 50 DCR 1092; Nov. 13, 2003, D.C. Law 15-39, § 1504(b), 50 DCR 5668; Feb. 6, 2004, D.C. Law 15-69, § 3(b), 50 DCR 9824; Mar. 13, 2004, D.C. Law 15-105, § 46, 51 DCR 881; Dec. 7, 2004, D.C. Law 15-205, § 5102, 51 DCR 8441; July 25, 2006, D.C. Law 16-142, § 2(c), 53 DCR 4412.)

Effect of amendments. — D.C. Law 14-190, in subsec. (b), made nonsubstantive changes to pars. (3) and (4), and added pars. (5) and (6).

D.C. Law 14-300 added subsec. (c).

D.C. Law 14-307, in subsec. (b), rewrote the introductory language of subpar. (5)(A), and rewrote sub-subpars. (5)(A)(i) and (5)(A)(ii).

D.C. Law 14-310 made a technical correction which did not change the text.

D.C. Law 15-39 rewrote subsec. (b)(5).

D.C. Law 15-69 rewrote subsec. (c).

D.C. Law 15-105, in subsec. (b)(4), validated a previously made technical correction.

D.C. Law 15-205, in subpar. (A) of par. (5) of subsec. (b), added at the end "For fiscal years 2005 through 2008, 100% of the residual and 100% of the annual savings from debt defeasance and prepayment shall be transferred to the General Fund."

D.C. Law 16-142, in subpar. (b)(5)(A), substituted "For fiscal year 2005," for "For fiscal years 2005 through 2008," and added "Commencing in fiscal year 2006, 100% of the residual (unless the Residual Bond has been sold) and 100% of the annual savings from debt defeasance and prepayment shall be transferred to the General

Fund. Unless the Residual Bond has been sold by the Fund, the Council may direct all or a portion of the residual to be transferred to the Fund." to the end; and added par. (b)(7) and subssecs. (d) and (e).

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2(d)(2) of Draft Master Plan for Public Reservation 13 Temporary Amendment Act of 2003 (D.C. Law 15-3, May 3, 2003, law notification 50 DCR 3783).

Emergency legislation. — For temporary (90-day) addition of section, see § 3721(c) of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see § 3721(c) of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

For temporary (90 day) amendment of section, see § 702 of Fiscal Year 2003 Budget Support Emergency Act of 2002 (D.C. Act 14-453, July 23, 2002, 49 DCR 8026).

For temporary (90 day) amendment of section, see § 402(b) of Fiscal Year 2003 Budget

Support Amendment Emergency Act of 2002 (D.C. Act 14-544, December 4, 2002, 49 DCR 11700).

For temporary (90 day) amendment of section, see § 2(d)(2) of Draft Master Plan for Public Reservation 13 Emergency Amendment Act of 2003 (D.C. Act 15-13, January 27, 2003, 50 DCR 1488).

For temporary (90 day) amendment of section, see § 402(b) of the Fiscal Year 2003 Budget Support Amendment Congressional Review Emergency Act of 2003 (D.C. Act 15-27, February 24, 2003, 50 DCR 2151).

For temporary (90 day) amendment of section, see § 402(b) of Fiscal Year 2003 Budget Support Amendment Second Congressional Review Emergency Act of 2003 (D.C. Act 15-103, June 20, 2003, 50 DCR 5499).

For temporary (90 day) amendment of section, see § 1504(b) of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) amendment of section, see § 1504(b) of Fiscal Year 2004 Budget Support Congressional Review Emergency Act of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

For temporary (90 day) amendment of section, see § 3(b) of Draft Master Plan for Public Reservation 13 Congressional Review Emergency Amendment Act of 2003 (D.C. Act 15-273, December 18, 2003, 51 DCR 40).

For temporary (90 day) amendment of section, see § 5102 of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 5102 of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 13-172. — For Law 13-172, see notes following § 7-1811.01.

Legislative history of Law 14-190. — Law 14-190, the “Fiscal Year 2003 Budget Support

Act of 2002”, was introduced in Council and assigned Bill No. 14-609, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 7, 2002, and June 4, 2002, respectively. Signed by the Mayor on July 3, 2002, it was assigned Act No. 14-403 and transmitted to both Houses of Congress for its review. D.C. Law 14-190 became effective on October 1, 2002.

Legislative history of Law 14-300. — For Law 14-300, see notes following § 7-1811.01.

Legislative history of Law 14-307. — For Law 14-307, see notes following § 7-225.

Legislative history of Law 14-310. — Law 14-310, the “Criminal Code and Miscellaneous Technical Amendments Act of 2002”, was introduced in Council and assigned Bill No. 14-954, which was referred to the Committee on Whole. The Bill was adopted on first and second readings on December 3, 2002, and December 17, 2002, respectively. Signed by the Mayor on January 22, 2003, it was assigned Act No. 14-622 and transmitted to both Houses of Congress for its review. D.C. Law 14-310 became effective on June 12, 2003.

Legislative history of Law 15-39. — For Law 15-39, see notes following § 7-732.

Legislative history of Law 15-69. — For Law 15-69, see notes following § 7-1811.01.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 7-136.

Legislative history of Law 15-205. — For Law 15-205, see notes following § 7-503.03.

Legislative history of Law 16-142. — For Law 16-142, see notes following § 7-1811.01.

Short title. — Short title of title VII of Law 14-190: Section 701 of D.C. Law 14-190 provided that title VII of the act may be cited as the Tobacco Settlement Savings Fund Amendment Act of 2002.

Short title of subtitle A of title V of Law 15-205: Section 5101 of D.C. Law 15-205 provided that subtitle A of title V of the act may be cited as the Tobacco Trust Fund Amendment Act of 2004.

Subchapter III. Tobacco Settlement Financing.

§ 7-1831.01. Definitions.

For the purposes of this subchapter, the term:

(1) “Bonds” means the taxable or tax-exempt revenue bonds, notes, or other obligations (including refunding bonds, notes, and other obligations), which may be issued on a senior or subordinate basis and would include any instrument evidencing the Corporation’s obligations relating to the Residual Interest, authorized to be issued by the Corporation pursuant to this subchapter.

(2) “Corporation” means the District of Columbia Tobacco Settlement Financing Corporation established by § 7-1831.03.

(3) “District” means the District of Columbia.

(4) “Master Settlement Agreement” means the settlement agreement (and related documents), as may be amended from time to time, entered into on November 23, 1998 by the District and leading United States tobacco product manufacturers.

(5) “Purchase Agreement” means a contract, as authorized under § 7-1831.03, between the Corporation and the District, under which the District sells to the Corporation all of the District’s right, title, and interest in and to the Master Settlement Agreement, including all the moneys, and any interest thereon, payable to or received by the District thereunder (except for the first payment of \$16.05 million which has already been received by the District), in exchange for a cash payment from the net proceeds of the sale of the Bonds (other than the Residual Bond), the Residual Bond, and the agreement of the Corporation to repay certain indebtedness of the District.

(5A) “Remainder Certificate” means a certificate evidencing an interest in the payments to be made under the Residual Bond after payment in full of all outstanding Bonds secured thereby.

(6) “Residual Bond” means a Bond evidencing the Residual Interest.

(6A) “Residual Bond Purchase Agreement” means a contract, as authorized under § 7-1831.03, between the Corporation and the Fund, under which the Fund sells to the Corporation all or a portion of the Fund’s right, title, and interest in and to the Residual Bond, including all the moneys, and any interest thereon, payable to or received by the Fund thereunder, in exchange for a cash payment from the net proceeds of the sale of the Bonds (other than the Residual Bond) and the Remainder Certificate, if any.

(7) “Residual Interest” means that portion of any payments received by the Corporation under the Master Settlement Agreement which is not annually required to:

(A) Defease certain indebtedness of the District pursuant to the provisions of the Purchase Agreement;

(B) Repay the holders of the Bonds (other than the Residual Bond);

(C) Establish, maintain, or replenish any reserve funds created in connection with the issuance of the Bonds (other than the Residual Bond);

(D) Pay any other obligations of the Corporation (other than the Residual Bond) incurred in connection with the issuance of the Bonds; or

(E) Pay the actual, reasonable, and necessary expenses of the Corporation.

(Oct. 19, 2000, D.C. Law 13-172, § 3702, 47 DCR 6308; July 25, 2006, D.C. Law 16-142, § 3(a), 53 DCR 4412.)

Effect of amendments. — D.C. Law 16-142, in par. (1), substituted “obligations), which may be issued on a senior or subordinate basis and would include” for “obligations), which would include”; and added pars. (5A) and (6A).

Emergency legislation. — For temporary

(90-day) addition of §§ 7-1831.01 to 7-1831.06, see §§ 3702 to 3707 of the Fiscal Year 2001 Budget Support Emergency Act of 2000 (D.C. Act 13-376, July 24, 2000, 47 DCR 6574).

For temporary (90 day) amendment of section, see §§ 3702 to 3707 of the Fiscal Year

2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 16-142. — For Law 16-142, see notes following § 7-1811.01.

Legislative history of Law 13-172. — For Law 13-172, see notes following § 7-1811.01.

§ 7-1831.02. Sale of rights under Master Settlement Agreement.

(a) For the purpose of financing the costs of the National Capital Medical Center, healthcare related issues, or other capital projects, and the repayment of outstanding indebtedness issued for certain capital projects and other undertakings of the District, the District may sell to the Corporation all of the District's right, title, and interest in and to the Master Settlement Agreement, including all the moneys, and any interest thereon, payable to or received by the District thereunder (except for the first payment of \$16.05 million which has already been received by the District), in exchange for: (1) a cash payment in the amount of the net sales proceeds of the Bonds (other than the Residual Bond); (2) the Residual Bond; and (3) the agreement of the Corporation to repay certain indebtedness of the District.

(b) Subject to the authorization and restrictions of this subchapter, the terms and conditions of the Purchase Agreement or the Residual Bond Purchase Agreement shall be determined by the Mayor, which determination shall be conclusively evidenced by his execution of the Purchase Agreement or the Residual Bond Purchase Agreement. The Mayor may execute and deliver any administrative or other documents or agreements which are necessary or desirable relating to the sale of the District's right, title, and interest in and to the Master Settlement Agreement or in connection with the issuance of the Bonds. Proceeds from the sale of the Bonds and other moneys received by the Corporation pursuant to the Purchase Agreement or the Residual Bond Purchase Agreement will be used to repay certain outstanding indebtedness of the District, to finance or refinance the National Capital Medical Center, healthcare related issues, or other capital projects or undertakings of the District, as well as to pay costs of issuance of the Bonds, to establish and fund reserve funds, and to pay other expenses and fees related to the issuance of the Bonds.

(c) For the purpose of financing the costs of the National Capital Medical Center, healthcare related issues, or other capital projects, and repayment of outstanding indebtedness issued for certain capital projects and other undertakings of the District, the Fund may sell to the Corporation all of the Fund's right, title, and interest in and to the Residual Bond, including all the moneys, and any interest thereon, payable to or received by the Fund thereunder, in exchange for:

(1) A cash payment in the amount of the net sales proceeds of Bonds secured by the Residual Bond; and

(2) The Remainder Certificate, if any.

(Oct. 19, 2000, D.C. Law 13-172, § 3703, 47 DCR 6308; July 25, 2006, D.C. Law 16-142, § 3(b), 53 DCR 4412; Mar. 25, 2009, D.C. Law 17-353, § 120, 56 DCR 1117.)

Effect of amendments. — D.C. Law 16-142, in subsec. (a), substituted “For the purpose of financing the costs of the National Capital Medical Center, healthcare related issues, or other capital projects, and the repayment” for “For the purpose of the repayment”; in subsec. (b), substituted “Purchase Agreement or the Residual Bond Purchase Agreement” for “Purchase Agreement” and substituted “indebtedness of the District, to finance or refinance the National Capital Medical Center, healthcare related issues, or other capital projects or undertakings of the District,” for “indebtedness of the District”; and added subsec. (b-1).

D.C. Law 17-353 redesignated subsec. (b-1) as subsec. (c).

Emergency legislation. — For temporary (90-day) addition of section, see notes following § 7-1831.01.

For temporary (90 day) amendment of section, see §§ 3702 to 3707 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 13-172. — For Law 13-172, see notes following § 7-1811.01.

Legislative history of Law 16-142. — For Law 16-142, see notes following § 7-1811.01.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 7-161.

§ 7-1831.03. Establishment of the District of Columbia Tobacco Settlement Financing Corporation; powers and authority.

(a) The District of Columbia Tobacco Settlement Financing Corporation is established as a special purpose, independent instrumentality of the District government. The Corporation shall be a corporate body, intended, created, and empowered to effectuate the purposes stated in this subchapter, and shall have a legal existence separate from the District government.

(b) The purpose of the Corporation is to purchase all of the District’s right, title, and interest in the Master Settlement Agreement, including all the moneys, and any interest thereon, payable to or received by the District thereunder (except for the first payment of \$16.05 million which has already been received by the District) and the Residual Bond, issuing Bonds to pay the purchase price therefor, and to repay certain of the outstanding indebtedness of the District issued for capital projects and other undertakings. The Corporation may enter into the Purchase Agreement or the Residual Bond Purchase Agreement and may perform any acts necessary or convenient to effectuate its purposes, including financing the costs of the National Capital Medical Center indebtedness of the District, to finance or refinance the National Capital Medical Center, healthcare related issues, or other capital projects or undertakings of the District, or other capital projects, repayment, refinancing, or defeasance of certain indebtedness issued for capital projects and other undertakings.

(c)(1) Pursuant to § 1-204.90, subject to the restrictions of this subchapter, the Council delegates to the Corporation the power to issue revenue bonds, notes, and other obligations, including refunding revenue bonds at or before maturity, to finance or refinance, or assist in the financing or refinancing of the National Capital Medical Center, healthcare related issues, or other capital projects or undertakings of the District, which obligations shall be payable solely from, and secured by, the payments under the Master Settlement Agreement sold under § 7-1831.02, including the power to provide for the authorization, securing, sale, and issuance of the Bonds consistent with this subchapter. This delegation is not exclusive and does not restrict, impair, or

supersede the authority otherwise vested by law in any District instrumentality.

(2)(A) The Corporation, by resolution of its board, may authorize the issuance of the Bonds. The resolution may stipulate the terms of the Bonds, including the following:

- (i) The date a Bond bears;
- (ii) The date a Bond matures and, if different, such other date on which a Bond may be paid;
- (iii) Whether Bonds are issued as serial bonds, term bonds, or as a combination of the two;
- (iv) The denominations;
- (v) The interest rate or rates, or variable rate or rates changing from time to time, as provided in, or determined pursuant to, authorization under the resolution;
- (vi) The method and terms of sale;
- (vii) The method for payment;
- (viii) Security for the Bonds;
- (ix) The terms of redemption;
- (x) The establishment of reserves and debt service funds and the use of proceeds of the Bonds for costs of issuance and otherwise in accordance with this subchapter; and
- (xi) Any other terms which, in the opinion of the board or its advisors, may be necessary or desirable for the sale of the Bonds.

(B) The resolution authorizing the issuance of the Bonds shall include a statement as to:

- (i) Whether the Bonds are intended to be sold by competitive bid or by negotiated sale and, if the Bonds are intended to be sold by negotiated sale, a statement of the reasons that sale by competitive bid is not feasible or is not in the best interests of the Corporation;
- (ii) Whether the Bonds are intended to be issued on a tax-exempt or taxable basis; and
- (iii) Whether the Bonds are intended to be issued on a senior or subordinate basis.

(C) The Corporation shall send a copy of the resolution authorizing the issuance of the Bonds to the Council within 3 days of its adoption.

(3) The board may delegate to the Chief Financial Officer as a member of the board the authority to prescribe the terms and conditions of the Bonds, including those referred to in § 7-1831.03(c)(2), except that the terms and conditions of the Residual Bond shall be consistent with the provisions of the Purchase Agreement and shall provide that the Residual Interest shall be paid to the Tobacco Settlement Trust Fund established by subchapter II of this chapter, and the terms and conditions of the Remainder Certificate, if any, shall be consistent with the provisions of the Residual Bond Purchase Agreement and shall provide that the payments under the Master Settlement Agreement after payment in full of all Bonds outstanding shall be paid to the Tobacco Settlement Trust Fund established by subchapter II of this chapter.

(4) A pledge by the Corporation of contract rights, general intangibles, or revenues collected by or on behalf of the Corporation as security for the Bonds

shall be valid and binding from the time the pledge is made. The contract rights, general intangibles, or revenues pledged shall immediately be subject to the lien of the pledge without physical delivery or further act, and the lien of any pledge shall be valid and binding against any person having a claim of any kind in tort, contract, or otherwise against the Corporation or the District government irrespective of whether the person has notice. Notwithstanding any law, the filing or recording of a resolution, trust, agreement, financing statement, continuation statement, or other instrument adopted or entered into by the Corporation in any public record is not required to perfect the lien against third parties.

(5) The Bonds shall be legal instruments in which public officers and public bodies of the District, insurance companies, insurance company associations, and other persons carrying on an insurance business, banks, bankers, banking institutions including savings and loan associations, building and loan associations, trust companies, savings banks, savings associations, investment companies, and other persons carrying on a banking business, administrators, guardians, executors, trustees, and other fiduciaries, and other persons authorized to invest in bonds or in other obligations of the District, may legally invest funds, including capital, in their control. The Bonds are also securities which legally may be deposited with and received by public officers and public bodies of the District or any agency of the District for any purpose for which the deposit of bonds or other obligations of the District is authorized by law.

(6) The Bonds shall not constitute an indebtedness of the District. The Bonds are not general obligations of the District and are not secured by a pledge of the full faith and credit of the District and the holders of the Bonds may not require the levy or imposition of taxes. The Bonds issued to purchase the District's right, title, and interest in the Master Settlement Agreement are special obligations of the Corporation payable solely from, and secured by, the payments received under the Master Settlement Agreement. The Bonds issued to purchase the Fund's right, title, and interest in the Residual Bond are obligations of the Corporation payable solely from, and secured by, the payments received under the Residual Bond. The Corporation has no taxing power. The Bonds shall contain on their face a statement containing all of the above. Nothing contained in the Bonds, or in the related financing or closing documents, shall create an obligation on the part of the Corporation or the District to make payments with respect to the Bonds from sources other than the payments received by the Corporation under the Master Settlement Agreement or under the Fund under the Residual Bond.

(7) Regardless of their form or character, the Bonds are negotiable instruments for all purposes of Title 28, subject only to the provisions of the bonds and notes for registration.

(8) No official, employee, or agent of the Corporation or the District shall be held personally liable solely because the Bonds are issued.

(9) The District pledges, which pledge the Corporation may include in any agreement with the holders of the Bonds, to the Corporation that the District will:

(i) Continue to diligently enforce the Model Statute against all tobacco product manufacturers selling tobacco products in the District that are not signatories to the Master Settlement Agreement;

(ii) Enforce the District's rights to receive the payments to be made to the District pursuant to the Master Settlement Agreement to the full extent permitted by the terms of the Master Settlement Agreement;

(iii) Not amend the Master Settlement Agreement in any way that would materially impair the rights of the holders of Bonds;

(iv) Not limit or alter rights vested in the Corporation to fulfill agreements made with holders of the Bonds; or

(v) Not in any way impair the rights and remedies of the holders of the Bonds until the Bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the holders of the Bonds are fully met and discharged.

(10) The signature of an officer of the Corporation that appears on the Bonds, including Bonds not yet issued or delivered, shall remain valid notwithstanding that the person has ceased to hold that office.

(11) The Bonds, and the interest thereon, shall be exempt from District taxation, except estate, inheritance, and gift taxes.

(12) During a control period (as defined in § 47-392.09), a resolution of the board of directors of Corporation authorizing the issuance of the Bonds shall be submitted to the District of Columbia Financial Responsibility and Management Assistance Authority ("Authority") for certification in accordance with § 47-392.04. A certification issued by the Authority during a control period shall be effective for purposes of this subsection for Bonds issued pursuant to the resolution of the board of directors of the Corporation whether the Bonds are issued during or after the control period.

(d) In addition to any other powers or authority conferred by this section or subchapter, the Corporation shall have all the powers of a corporate body under the laws of the District to the extent not inconsistent with or restricted by the provisions of this section or subchapter, including the power to:

(1) Adopt, amend, repeal, and enforce bylaws, rules, regulations, and procedures as it determines appropriate to the governance of its affairs and the conduct of its business and which are not inconsistent with this section;

(2) Sue and be sued, and to complain and defend, in its own name;

(3) Adopt, alter, and use a corporate seal, which shall be judicially noticed; provided, that the absence of the seal on a contract or other document shall not affect its validity;

(4) Acquire, purchase, hold, lease, sell, assign, pledge, or convey real and personal property, contract rights, general intangibles, revenues, moneys, and accounts as may be proper or expedient to carry out the purposes of the Corporation and this subchapter, and to assign, convey, sell, transfer, lease, or otherwise dispose of such property;

(5) Elect, appoint, and employ such officers, agents, and employees as the Corporation deems advisable to operate and manage the affairs of the Corporation, and to define their duties and fix, adjust, and define their compensation as it determines to be appropriate;

(6) Make, execute, or perform contracts, commitments, agreements, trust indentures, and other instruments and agreements, including, as approved by its board of directors, investment contracts, swap agreements and other hedging transactions, liquidity facilities, insurance agreements, or reinsurance agreements, necessary, or convenient to accomplish the purposes of the Corporation and this subchapter;

(7) Select, retain, and employ professionals, contractors, or agents which are necessary, or convenient to enable or assist the Corporation in carrying out the purposes of the Corporation;

(8) Indemnify or insure members of the board and officers of the Corporation as it determines appropriate;

(9) Purchase insurance or self-insure against loss in connection with its property and other assets or other risks, in such amounts and from such insurers as it determines appropriate; and

(10) Perform any act not inconsistent with federal or District law necessary or convenient to carry out the purposes of the Corporation.

(e)(1) The Corporation shall be governed by a board of directors consisting of 5 members. One member shall be the Chief Financial Officer (or, if the office is vacated, and until a successor is appointed, the acting Chief Financial Officer), one member shall be the Mayor or his designee (or, if the office is vacated, and until a successor is appointed, the acting Mayor or his designee), one member shall be the Chairman of the Council of the District or his designee (or, if the position is vacated, and until a successor is appointed, the acting Chairman), and 2 members shall be private citizens ("independent members"). Actions of the board shall be determined by a majority vote of the members unless a unanimous vote of all of the members will be required by the by-laws of the Corporation for certain purposes; provided, that the affirmative vote of the independent members shall be required for the issuance of the Bonds.

(2) One of the independent members of the board of directors shall be appointed by the Mayor and one shall be appointed by the Council within 30 calendar days after October 19, 2000, or 180 days after the date of a vacancy. Each of the independent members of the board shall serve a term of 4 years, except that an independent member selected to fill a vacancy occurring before the end of the term for which his predecessor was selected shall only serve until the end of the term. A member may serve after the expiration of his term until his successor has taken office.

(3) The members shall serve without compensation for their membership, but may receive, or be reimbursed for, the actual, reasonable, and necessary expenses incurred in the performance of their official duties.

(f) All operating and administrative expenses of the Corporation and costs of issuance of the Bonds shall be paid by the Corporation out of payments received by the Corporation under the Master Settlement Agreement and from the proceeds of the Bonds.

(g) Upon the request of the Corporation, the Mayor and the governing officer or body of each instrumentality of the District, by delegation, contract, or agreement, may direct that personnel or other resources of a District department, office, agency, establishment, or instrumentality be made available to

the Corporation on a full cost reimbursable basis to carry out the Corporation's duties. Personnel detailed to the Corporation under this subsection shall not be considered employees of the Corporation, but shall remain employees of the department, agency, establishment, or instrumentality from which the employees were detailed. With the consent of an executive agency, department, or independent agency of the federal government or the District government, the Corporation may use the information, services, staff, and facilities of the department or agency on a full cost reimbursable basis.

(h)(1) The existence of the Corporation shall be perpetual; provided, that the board of directors, by majority vote (including both of the independent members), may dissolve the Corporation when the Bonds and all other obligations of the Corporation incurred with respect to the issuance of the Bonds have been repaid, or their repayment has been provided for fully, and the existence of the Corporation shall terminate when adequate provision has been made for all other debts and obligations, and the winding up of the affairs, of the Corporation. No assets or earnings of the Corporation shall inure to a private person or entity.

(2) As long as the Bonds are outstanding:

(A) The Corporation shall not dissolve or file a voluntary petition under any bankruptcy legislation in effect from time to time or sell all, or substantially all, of its assets;

(B) No public officer, organization, entity, or other person may authorize the Corporation to be or become a debtor under any bankruptcy legislation in effect from time to time; and

(C) The Corporation shall not take any action that materially and adversely affects the rights of the holders of the Bonds or other obligations issued by it.

(i) All assets and income of the Corporation shall be exempt from District taxation.

(j) The Corporation shall have the same fiscal year as the District.

(k) An independent accountant, appointed by the board of directors of the Corporation, shall conduct an annual audit of the accounts and records of the Corporation.

(l) No District laws, rules, or orders governing procurement or administrative procedures or personnel shall apply to the Corporation, its activities, board members, officers, or employees, except as otherwise provided for in this subchapter.

(m)(1) Notwithstanding any other provisions of this section, the Corporation shall select the underwriter or placement agent for the Bonds (not including the Residual Bond) and legal counsel, including bond counsel, by competitive sealed bidding. The contracts shall be awarded on the basis of lowest evaluated bid price (as the term is defined in § 2-301.07(25)). In evaluating the bids, the following factors shall be considered:

(A) The type of business or organization and its history;

(B) The resumes and professional qualifications of the business or organization's staff, including relevant professional licenses, affiliations, and specialties;

(C) Information attesting to financial capability, including financial statements;

(D) A summary of similar contracts awarded to the bidder, and the bidder's performance of those contracts;

(E) A statement attesting to compliance with wage, hour, workplace safety, and other standards of labor law;

(F) A statement attesting to compliance with federal and District equal employment opportunity law; and

(G) Information about pending lawsuits or investigations, and judgments, indictments, or convictions against the bidder or its proprietors, partners, directors, officers, or managers.

(2) The invitation for bids shall state that the selection shall be made on the basis of the lowest evaluated bid price. The Corporation shall provide public notice of the invitation for bids of not less than 10 working days. Public notice of an invitation for bids shall include publication in a newspaper of general circulation, and in trade publications considered to be appropriate by the Corporation to give adequate public notice.

(3) Bids shall be opened publicly at the time and place designated in the invitation for bids. Each bid, with the name of the bidder, shall be recorded and be open to public inspection. The contract shall be awarded with reasonable promptness by written notice to the responsive and responsible bidder whose bid will be most advantageous to the Corporation, considering price and other factors as set forth in paragraph (1) of this subsection.

(Oct. 19, 2000, D.C. Law 13-172, § 3704, 47 DCR 6308; Oct. 21, 2000, D.C. Law 13-176, § 8(d)(3), 47 DCR 6835; July 25, 2006, D.C. Law 16-142, § 3(c), 53 DCR 4412; Mar. 14, 2007, D.C. Law 16-294, § 10, 54 DCR 1086.)

Effect of amendments. — D.C. Law 13-176, in par. (m)(2), substituted “10 working days” for “30 days”.

Section 9 of D.C. Law 13-176 provided: “Rule of construction. ”To the extent that provisions of this act conflict with any order of the Financial Responsibility and Management Assistance Authority (‘Financial Authority’), issued pursuant to section 207(d) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995 the provisions of the Financial Authority Order shall govern.”

D.C. Law 16-142, in subsec. (b), substituted “by the District and the Residual Bond, issuing” for “by the District), issuing”, substituted “Purchase Agreement or the Residual Bond Purchase Agreement and” for “Purchase Agreement and”, and substituted “including financing the costs of the National Capital Medical Center indebtedness of the District, to finance or refinance the National Capital Medical Center, healthcare related issues, or other capital projects or undertakings of the District, or other capital projects, repayment, refinancing,” for “including repayment, refinancing,”; in par. (c)(1), substituted “to finance or refinance”

for “to refinance”, substituted “the financing or refinancing of the National Capital Medical Center, healthcare related issues, or other capital projects or undertakings” for “the refinancing of, capital projects and other undertakings” and deleted the last sentence which had read: “The refinancing of capital projects and other undertakings of the District shall include the refinancing, repayment, or defeasance of general obligation debt of the District incurred for capital projects and other undertakings.”; in subpar. (c)(2)(B)(i), substituted “Corporation,” for “Corporation; and”; in subpar. (c)(2)(B)(ii), substituted “taxable basis; and” for “taxable basis.”; added subpar. (c)(2)(B)(iii); in par. (c)(3), substituted “subchapter II of this chapter, and the terms and conditions of the Remainder Certificate, if any, shall be consistent with the provisions of the Residual Bond Purchase Agreement and shall provide that the payments under the Master Settlement Agreement after payment in full of all Bonds outstanding shall be paid to the Tobacco Settlement Trust Fund established by subchapter II of this chapter.” for “subchapter II of this chapter.”; in par. (c)(6), substituted “The Bonds issued to pur-

chase the District's right, title, and interest in the Master Settlement Agreement are special obligations of the Corporation payable solely from, and secured by, the payments received under the Master Settlement Agreement. The Bonds issued to purchase the Fund's right, title, and interest in the Residual Bond are obligations of the Corporation payable solely from, and secured by, the payments received under the Residual Bond." for "The Bonds are special obligations of the Corporation payable solely from, and secured by, the payments received under the Master Settlement Agreement.", and substituted "Settlement Agreement or under the Fund under the Residual Bond." for "Settlement Agreement." in the last sentence; and rewrote par. (c)(9), which had read as follows: "(9) The District pledges to the Corporation and the holders of the Bonds that the District will not limit or alter rights vested in the Corporation to fulfill agreements made with holders of the Bonds, or in any way impair the rights and remedies of the holders of the Bonds until the Bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the holders of the Bonds are fully met and discharged. The Corporation may include this pledge of the District in any agreement with the holders of the Bonds."

D.C. Law 16-294, in subsec. (b), substituted "District) and the Residual Bond" for "District and the Residual Bond)".

Temporary Amendment of Section. — For temporary (225 day) amendment of the Fiscal Year 2001 Budget Support Temporary Amendment Act of 2000, see §§ 2(d), 3(d) of (D.C. Law 13-197, October 21, 2000, law notification 47 DCR 8987).

Emergency legislation. — For temporary (90-day) addition of section, see notes following § 7-1831.01.

For temporary (90-day) amendment of section, see §§ 2(c) and 3(c) of the Fiscal Year 2001 Budget Support Emergency Amendment Act of 2000 (D.C. Act 13-381, July 24, 2000, 47 DCR 6695).

For temporary (90 day) additions, see §§ 3702 to 3707 of the Fiscal Year 2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 13-172. — For Law 13-172, see notes following § 7-1811.01.

Legislative history of Law 13-176. — Law 13-176, the "State Education Office Establishment Act of 2000," was introduced in Council and assigned Bill No. 13-416, which was referred to the Committee on Education, Libraries and Recreation. The Bill was adopted on first and second readings on June 6, 2000, and July 11, 2000, respectively. Signed by the Mayor on July 26, 2000, it was assigned Act No. 13-187 and transmitted to both Houses of Congress for its review. D.C. Law 13-176 became effective on October 21, 2000.

Legislative history of Law 16-142. — For Law 16-142, see notes following § 7-1811.01.

Legislative history of Law 16-294. — Law 16-294, the "Second Technical Amendments Act of 2006", was introduced in Council and assigned Bill No. 16-996, which was referred to Committee on the Whole. The Bill was adopted on first and second readings on November 14, 2006, and December 5, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-653 and transmitted to both Houses of Congress for its review. D.C. Law 16-294 became effective on March 14, 2007.

§ 7-1831.04. True sale.

(a) The transfer of the District's right, title, and interest in and to the Master Settlement Agreement to the Corporation or any assignee which the parties have in the governing documentation expressly stated to be a sale or other absolute transfer shall be treated as an absolute transfer of all of the District's right, title, and interest, as in a true sale, and not as a pledge or other financing, of the District's right, title, and interest in and to the Master Settlement Agreement, including the moneys payable or received thereunder and any interest thereon (except for the first payment of \$16.05 million which has already been received by the District). The grant to the holders of the Bonds of a security interest in, and a lien on, all of the Corporation's right, title, and interest in and to the Master Settlement Agreement, including the moneys payable or received thereunder and any interest thereon (except for the first payment of \$16.05 million which has already been received by the District), the provision by the District of any credit enhancement with respect to the Bonds,

or the characterization of the transaction for accounting purposes or securities regulation shall not impair or negate the characterization of any transfer as a true sale. The transfer of the District's right, title, and interest in and to the Master Settlement Agreement to the Corporation or any assignee shall be deemed perfected as against third persons having claims in tort, contract, or otherwise, including any judicial lien creditors, when a sale or transfer of the right, title, and interest in and to the Master Settlement Agreement in writing has been executed and delivered by the District to the Corporation or any assignee.

(b) The transfer of the Fund's right, title, and interest in and to the Residual Bond to the Corporation or any assignee that the parties have in the governing documentation expressly stated to be a sale or other absolute transfer shall be treated as an absolute transfer of all of the Fund's right, title, and interest, as in a true sale, and not as a pledge or other financing, of the Fund's right, title, and interest in and to the Residual Bond, including the moneys payable or received thereunder and any interest thereon. The grant to the holders of the Bonds of a security interest in, and a lien on, all of the Fund's right, title, and interest in and to the Residual Bond, including the moneys payable or received thereunder and any interest thereon, the provision by the Fund or the District of any credit enhancement with respect to the Bonds (other than the Residual Bond), or the characterization of the transaction for accounting purposes or securities regulation shall not impair or negate the characterization of any transfer as a true sale. The transfer of the Fund's right, title, and interest in and to the Residual Bond to the Corporation or any assignee shall be deemed perfected as against third persons having claims in tort, contract, or otherwise, including any judicial lien creditors, when a sale or transfer of the right, title, and interest in and to the Residual Bond in writing has been executed and delivered by the Fund to the Corporation or any assignee.

(Oct. 19, 2000, D.C. Law 13-172, § 3705, 47 DCR 6308; July 25, 2006, D.C. Law 16-142, § 3(d), 53 DCR 4412.)

Effect of amendments. — D.C. Law 16-142, designated the existing text of section as subsec. (a); and added subsec. (b).

Emergency legislation. — For temporary (90-day) addition of section, see notes following § 7-1831.01.

For temporary (90 day) amendment of section, see §§ 3702 to 3707 of the Fiscal Year

2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 13-172. — For Law 13-172, see notes following § 7-1811.01.

Legislative history of Law 16-142. — For Law 16-142, see notes following § 7-1811.01.

§ 7-1831.05. Severability.

If a provision of this subchapter or its application to a person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this subchapter which can be given effect without the invalid provisions or application.

(Oct. 19, 2000, D.C. Law 13-172, § 3706, 47 DCR 6308.)

Emergency legislation. — For temporary (90-day) addition of section, see notes following § 7-1831.01.

For temporary (90 day) amendment of section, see §§ 3702 to 3707 of the Fiscal Year

2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 13-172. — For Law 13-172, see notes following § 7-1811.01.

§ 7-1831.06. Termination.

This subchapter shall expire on September 30, 2001, if the Bonds (other than the Residual Bond) are not sold and issued. In the event of such expiration, all the assets of the Corporation shall vest in the District.

(Oct. 19, 2000, D.C. Law 13-172, § 3707, 47 DCR 6308.)

Emergency legislation. — For temporary (90-day) addition of section, see notes following § 7-1831.01.

For temporary (90 day) amendment of section, see §§ 3702 to 3707 of the Fiscal Year

2001 Budget Support Congressional Review Emergency Act of 2000 (D.C. Act 13-438, October 20, 2000, 47 DCR 8740).

Legislative history of Law 13-172. — For Law 13-172, see notes following § 7-1811.01.

SUBTITLE I. PROTECTION AND CARE SYSTEMS.

CHAPTER 19. ADULT PROTECTIVE SERVICES.

| Sec. | Sec. |
|--|---|
| 7-1901. Definitions. | 7-1909. Rules. |
| 7-1902. [Repealed]. | 7-1910. Payment or reimbursement for cost of protective services. |
| 7-1903. Reporting requirements. | 7-1911. Waiver of privilege. |
| 7-1904. Investigations. | 7-1912. Penalties; enforcement. |
| 7-1905. Provision of protective services. | 7-1913. Reporting to Council. |
| 7-1906. Provisional protection order. | |
| 7-1907. Ex parte temporary protection order. | |
| 7-1908. Qualified immunity for person reporting alleged abuse. | |

§ 7-1901. Definitions.

When used in this chapter, the following terms shall have the meanings ascribed by this section:

(1)(A) "Abuse" means:

(i) The intentional or reckless infliction of serious physical pain or injury;

(ii) The use or threatened use of violence to force participation in "sexual conduct," defined in § 22-3101(5);

(iii) The repeated, intentional imposition of unreasonable confinement or threats to impose unreasonable confinement, resulting in severe mental distress;

(iv) The repeated use of threats or violence, resulting in shock or an intense, expressed fear for one's life or of serious physical injury; or

(v) The intentional or deliberately indifferent deprivation of essential food, shelter, or health care in violation of a caregiver's responsibilities, when that deprivation constitutes a serious threat to one's life or physical health.

(B) An adult shall not be considered abused under this chapter for the sole reason that he or she seeks, or his or her caregiver provides or permits to be provided, with the express consent or in accordance with the practice of the adult, treatment by spiritual means through prayer alone in accordance with a religious method of healing, in lieu of medical treatment.

(1A) "Adult" means an individual 18 years of age or older.

(2)(A) "Adult in need of protective services" means an individual 18 years of age or older who:

(i) Is highly vulnerable to abuse, neglect, self-neglect, or exploitation because of a physical or mental impairment, self-neglect, or incapacity;

(ii) Has recently been or is being abused, neglected, or exploited by another or meets the criteria for self-neglect; and

(iii) Has no one willing and able to provide adequate protection.

(B) An adult shall not be considered in need of protective services under this chapter for the sole reason that he or she seeks, or his or her caregiver provides or permits to be provided, with the express consent or in accordance with the practice of the adult, treatment by spiritual means through prayer alone in accordance with a religious method of healing, in lieu of medical treatment.

(3) “Adult protective services worker” (APS worker) means an employee of the District or a private social services agency under contract with the District who conducts investigations or provides protective services under this chapter.

(4) “Caregiver” means a person that, by law, contract, court order, or voluntary action, is charged with or has assumed the responsibility for an adult’s essential food, shelter, or health-care needs.

(5) “Court” means the Superior Court of the District of Columbia.

(6) “Department” means the District of Columbia Department of Human Services.

(7) “District” means the District of Columbia.

(8) “Exploitation” means the unlawful appropriation or use of another’s “property,” defined in § 22-3201, for one’s own benefit or that of a 3rd person.

(8A) “Incapacity” means the state of being an incapacitated individual as defined by § 21-2011(11).

(9)(A) “Neglect” means:

(i) The repeated, careless infliction of serious physical pain or injury;

(ii) The repeated failure of a caregiver to take reasonable steps, within the purview of his or her responsibilities, to protect against acts of abuse described in paragraph (1)(B) of this section;

(iii) The repeated, careless imposition of unreasonable confinement, resulting in severe mental distress; or

(iv) The careless deprivation of essential food, shelter, or health care in violation of a caregiver’s responsibilities, when that deprivation constitutes a serious threat to one’s life or physical health.

(B) An adult shall not be considered neglected under this chapter for the sole reason that he or she seeks, or his or her caregiver provides or permits to be provided, with the express consent or in accordance with the practice of the adult, treatment by spiritual means through prayer alone in accordance with a religious method of healing, in lieu of medical treatment.

(10) “Person” means an individual, facility, agency, corporation, partnership, the District government, or any other organizational entity.

(11) “Police” means the Metropolitan Police Department of the District of Columbia.

(12) “Protective services” means those services or provisions reasonably calculated to remedy or substantially reduce the likelihood of abuse, neglect, or exploitation by another, or self-neglect, including, but not limited to: Food, heat, shelter, clothing, health care, home care, counseling, legal assistance, and social casework.

(13)(A) “Self-neglect” means the failure of an adult, due to physical or mental impairments or incapacity, to perform essential self-care tasks, including:

(i) Providing essential food, clothing, shelter, or medical care;

(ii) Obtaining goods or services necessary to maintain physical health, mental health, emotional well-being, and general safety; or

(iii) Managing his or her financial affairs.

(B) An adult shall not be considered to be committing self-neglect under this chapter for the sole reason that he or she seeks treatment by spiritual

means through prayer alone in accordance with a religious method of healing, in lieu of medical treatment.

(Mar. 14, 1985, D.C. Law 5-156, § 2, 32 DCR 13; Mar. 8, 2006, D.C. Law 16-67, § 2(a), 53 DCR 40.)

Section references. — This section is referred to in § 7-1904.

Prior Codifications. — 1981 Ed., § 6-2501.

Effect of amendments. — D.C. Law 16-67, rewrote pars. (1), (2), and (9); added pars. (1A), (8A), (13); and, in par. (12), substituted “exploitation by another, or self-neglect,” for “exploitation by another.”

Legislative history of Law 5-156. — Law 5-156, the “Adult Protective Services Act of 1984,” was introduced in Council and assigned Bill No. 5-334, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 20, 1984, and December 4, 1984, respectively. Signed by the Mayor on December 7, 1984, it was assigned Act No. 5-221 and transmitted to both Houses of Congress for its review.

Legislative history of Law 16-67. — Law 16-67, the “Karyn Barquin Adult Protective Services Self-Neglect Expansion Amendment Act of 2005,” was introduced in Council and assigned Bill No. 16-46 which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 1, 2005, and December 6, 2005,

respectively. Signed by the Mayor on December 22, 2005, it was assigned Act No. 16-229 and transmitted to both Houses of Congress for its review. D.C. Law 16-67 became effective on March 8, 2006.

Delegation of Authority. — Delegation of authority pursuant to title XXIII (Section 2352(a)) of Public Law 97-35, the “Omnibus Budget Reconciliation Act, to Deliver Social Services Block Grant Funded Homemaker Services for Individuals and Families who are in Need of or Receiving Protective Services”, see Mayor’s Order 97-101, May 28, 1997 (44 DCR 3529).

Re-Delegation of Authority Pursuant to Title XXIII (Sec. 2352(a)) of Public Law 97-35, the “Omnibus Budget Reconciliation Act,” as Amended, to Deliver Social Services Block Grant Funded Homemaker Services for Individuals and Families Who are in Need of or Receiving Protective Services, see Mayor’s Order 2001-95, June 28, 2001 (48 DCR 6276).

Editor’s notes. — Delayed application of Law 5-156: Section 15(b) of D.C. Law 5-156 provided that, except as provided in § 6-2503(e), the applicability of the act shall be delayed until October 1, 1985.

§ 7-1902. Limitations on applicability. [Repealed].

Repealed.

(Mar. 14, 1985, D.C. Law 5-156, § 3, 32 DCR 13; Mar. 8, 2006, D.C. Law 16-67, § 2(b), 53 DCR 40.)

Prior Codifications. — 1981 Ed., § 6-2502.

Legislative history of Law 5-156. — For legislative history of D.C. Law 5-156, see Historical and Statutory Notes following § 7-1901.

Legislative history of Law 16-67. — For Law 16-67, see notes following § 7-1901.

Editor’s notes. — Delayed application of Law 5-156: See Historical and Statutory Notes following § 7-1901.

§ 7-1903. Reporting requirements.

(a)(1) Except as provided in subsection (b) of this section, whenever a conservator, court-appointed mental retardation advocate, guardian, health-care administrator, licensed health professional, police officer, humane officer of any agency charged with the enforcement of animal cruelty laws, bank manager, financial manager, or social worker has as a result of his or her appointment, employment, or practice substantial cause to believe that an adult is in need of protective services because of abuse, neglect, or exploitation

by another, he or she shall immediately report this belief in accordance with subsection (c) of this section.

(2) Any person may voluntarily report an alleged case of abuse, neglect, self-neglect, or exploitation when he or she has reason to believe that an adult is in need of protective services. Voluntary reporting shall also be effected in accordance with subsection (c) of this section.

(b) The duty to report established by subsection (a)(1) of this section shall not apply to a social worker or licensed health professional who has as a client or patient, or is employed by a lawyer representing, a third person who is allegedly responsible for the abuse or neglect.

(c) A report made pursuant to this section may be either oral or written and shall be transmitted to the division within the Department designated by the Mayor to receive these reports. Each report shall include, if known: The name, age, physical description, and location of the adult alleged to be in need of protective services; the name and location of the person(s) allegedly responsible for the abuse, neglect, or exploitation; the nature and extent of the abuse, neglect, self-neglect, or exploitation; the basis of the reporter's knowledge; and any other information the reporter believes might be helpful to an investigation. A reporter may be required to identify himself or herself only when obliged to report under subsection (a)(1) of this section.

(d)(1) The Department shall maintain a record of all reports received and be capable of receiving reports 24 hours a day, 7 days a week (including holidays). Except as provided in paragraph (4) of this subsection, the Department may release reports and investigative information acquired pursuant to this chapter only:

(A) To another public or private agency, or to the court-appointed representative of an adult in need of protective services, only to the minimal extent required to conduct an investigation, provide services under this chapter, or petition the court for appointment of a guardian of the person or conservatorship of the estate of the person (or a limited guardianship or conservatorship) under Chapter 20 of Title 21;

(B) To the Attorney General for the District of Columbia or United States Attorney if requested for an investigation, prosecution, or civil or administrative enforcement action;

(B-1) To the Metropolitan Police Department;

(C) If directed by court order; or

(D) For the purposes of and in accordance with Chapter 2A of this title [§ 7-251 et seq.].

(2) A recipient of a report or investigative information released pursuant to paragraph (1) of this subsection shall be subject to the same restrictions on disclosure applicable to the Department under that paragraph.

(3) Any person possessing a report or investigative information acquired pursuant to this chapter shall take reasonable steps to prevent the disclosure of information that might reveal the reporter's identity to the person(s) allegedly responsible for the abuse, neglect, or exploitation.

(4) The Department may release statistics and other data acquired pursuant to this chapter for research, reporting, or educational purposes provided all identifying references to individuals are deleted.

(d-1) The Department may provide outreach and training on the requirements of this section to members of the public and to appropriate governmental personnel, including law enforcement officers, social services personnel, judicial officers, guardians and conservators for incapacitated adults, and others as may be determined by the Mayor.

(e) The Mayor shall widely publicize the phone number and mailing address of the division within the Department designated to receive reports under this section, and may conduct educational programs for those persons required to report under subsection (a)(1) of this section.

(Mar. 14, 1985, D.C. Law 5-156, § 4, 32 DCR 13; Mar. 8, 2006, D.C. Law 16-67, § 2(c), 53 DCR 40; Dec. 5, 2008, D.C. Law 17-281, § 103, 55 DCR 9186; Dec. 4, 2010, D.C. Law 18-273, § 207, 57 DCR 7171.)

Section references. — This section is referred to in §§ 7-1908 and 7-1912.

Prior Codifications. — 1981 Ed., § 6-2503.

Effect of amendments. — D.C. Law 16-67, in subsec. (a)(1), substituted “bank manager, financial manager, or social worker” for “or social worker” and “abuse, neglect, or exploitation” for “abuse or neglect”; in subsec. (a)(2), substituted “self-neglect, or exploitation” for “or exploitation”; in subsec. (b), substituted “a third person” for “the 3rd person”; in subsec. (c), substituted “the nature and extent of the abuse, neglect, self-neglect, or exploitation” for “the nature and extent of the abuse, neglect, or exploitation”; rewrote subsec. (d)(1)(A); in subsec. (d)(1)(B), substituted “Attorney General for the District of Columbia” for “Corporation Counsel”; added subsec. (d)(1)(B-1); in subsec. (d)(2), substituted “paragraph (1)” for “paragraph (1)(A) through (C)”; added subsec. (d-1); and rewrote subsec. (e).

D.C. Law 17-281, in subsec. (a)(1), substituted “police officer, humane officer of any agency charged with the enforcement of animal cruelty laws,” for “police officer.”

D.C. Law 18-273, in subsec. (d)(1), deleted “or” from the end of subpar. (B-1), substituted “; or” for a period at the end of subpar. (C), and added subpar. (D).

Emergency legislation. — For temporary (90 day) amendment of section, see § 207 of

Data-Sharing and Information Coordination Emergency Amendment Act of 2010 (D.C. Act 18-530, August 6, 2010, 57 DCR 8099).

For temporary (90 day) amendment of section, see § 207 of Data-Sharing and Information Coordination Congressional Review Emergency Amendment Act of 2010 (D.C. Act 18-582, October 20, 2010, 57 DCR 10118).

Legislative history of Law 5-156. — For legislative history of D.C. Law 5-156, see Historical and Statutory Notes following § 7-1901.

Legislative history of Law 16-67. — For Law 16-67, see notes following § 7-1901.

Legislative history of Law 17-281. — Law 17-281, the “Animal Protection Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-89 which was referred to the Committees on Health and Public Safety and Judiciary. The Bill was adopted on first and second readings on July 1, 2008, and July 15, 2008, respectively. Signed by the Mayor on August 4, 2008, it was assigned Act No. 17-493 and transmitted to both Houses of Congress for its review. D.C. Law 17-281 became effective on December 5, 2008.

Legislative history of Law 18-273. — For Law 18-273, see notes following § 7-131.

Editor’s notes. — Delayed application of Law 5-156: See Historical and Statutory Notes following § 7-1901.

§ 7-1904. Investigations.

(a)(1) In accordance with this section and the rules to be issued by the Mayor pursuant to § 7-1909, the Department shall, except as provided in paragraph (2) of this subsection, either investigate each report received or refer a report for investigation to another public or private agency designated by the Mayor.

(2) The Department shall not be required to investigate a report that:

(A) Fails to allege facts that, if proved, would be sufficient to support the

conclusion that the alleged victim is an “adult in need of protective services” as that term is defined in § 7-1901(2); or

(B) Is substantively repetitive of a previously reported incidence of abuse, neglect, or exploitation.

(3) If a report alleges the existence of an immediate, substantial risk of life-threatening harm to an adult in need of protective services, the Department shall immediately notify the police, who shall conduct a prompt investigation to determine the need for police intervention. In addition, within 24 hours of the Department’s receiving such a report, an APS worker shall commence an investigation to determine the need for protective services. These 2 investigations may be conducted either jointly or separately.

(4) For reports that allege an adult is in need of protective services but do not allege the existence of an immediate, substantial risk of life-threatening harm, an APS worker shall commence an investigation to determine the need for protective services within 10 days (excluding Saturdays, Sundays, and legal holidays) of the Department’s receiving the report.

(5) In accordance with procedures to be established under § 7-1909(1), the Mayor shall ensure that, when appropriate, an APS worker is accompanied by a police officer while conducting an initial or follow-up investigation.

(b) Before entering a residence or otherwise approaching an adult who is allegedly in need of protective services, an APS worker conducting an investigation under this section shall first announce his or her purpose and, if accompanied by a police officer, the presence of that officer, and then secure the consents of the adult allegedly in need of protective services and any other adult who is present and appears to have a reasonable expectation of privacy in the residence or immediate premises. If the adult allegedly in need of protective services objects to the investigation and it does not manifestly appear to the APS worker that the objection is prompted by fear or intimidation instilled by another or that the adult is incapacitated, the investigation shall be terminated. If the objection manifestly appears prompted by fear or intimidation instilled by another, or if another person on the premises refuses to allow the investigation to take place, the Department may, either on its own behalf or, if the APS worker is employed by an agency other than the Department, on behalf of the other investigating agency, request the Attorney General to petition for an ex parte order pursuant to subsection (c) of this section. Where good cause exists to believe that a self-neglecting person is incapacitated, the APS worker, the Department, or the Attorney General may provide protective services pursuant to § 7-1905(c-1).

(c) If requested by the Department, the Attorney General shall promptly conduct a factual inquiry and, if legally supportable, file a petition in court for an ex parte order enjoining persons other than the adult who is allegedly in need of protective services from directly or indirectly interfering with the investigation. The petition shall allege specific facts, supported by oath or affirmation, showing that:

(1) There is probable cause to believe an adult located at a specified location is in need of protective services; and

(2) An APS worker conducting an investigation was denied reasonable access to the adult by a 3rd person, or, if the adult objected to the investigation,

there is probable cause to believe the objection was prompted by fear or intimidation instilled by another.

(d) If the court finds that a proper showing has been made under subsection (c) (1) and (2) of this section, it shall enjoin the appropriate 3rd person(s) from interfering with an investigation under this section. The court may also order any other relief deemed necessary to facilitate an investigation, but in so doing it shall fully respect the right of an adult who is allegedly in need of protective services to freely object to and terminate that investigation.

(e) The scope of an investigation under this section shall be only that which is minimally necessary for an APS worker to determine whether an adult is in need of protective services, and, if so, what protective services are needed to remedy or substantially reduce the likelihood of abuse, neglect, self-neglect, or exploitation by others.

(Mar. 14, 1985, D.C. Law 5-156, § 5, 32 DCR 13; Mar. 8, 2006, D.C. Law 16-67, § 2(d), 53 DCR 40; Mar. 25, 2009, D.C. Law 17-353, § 102(a), 56 DCR 1117.)

Section references. — This section is referred to in §§ 7-1905 and 7-1909.

Prior Codifications. — 1981 Ed., § 6-2504.

Effect of amendments. — D.C. Law 16-67, in subsec. (b), substituted “another or that the adult is incapacitated, the investigation shall be terminated, for “another, the investigation shall be terminated,” and “Attorney General to petition for an ex parte order pursuant to subsection (c) of this section. Where good cause exists to believe that a self-neglecting person is incapacitated, the APS worker, the Department, or the Attorney General may provide protective services pursuant to § 7-1905(c-1).” for “Corporation Counsel to petition for an ex parte order pursuant to subsection (c) of this

section”; in subsec. (c), substituted “Attorney General” for “Corporation Counsel”; and, in subsec. (e), substituted “neglect, self-neglect,” for “neglect.”

D.C. Law 17-353 validated a previously made technical correction in subsec. (b).

Legislative history of Law 5-156. — For legislative history of D.C. Law 5-156, see Historical and Statutory Notes following § 7-1901.

Legislative history of Law 16-67. — For Law 16-67, see notes following § 7-1901.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 7-161.

Editor’s notes. — Delayed application of Law 5-156: See Historical and Statutory Notes following § 7-1901.

§ 7-1905. Provision of protective services.

(a)(1) The Department shall ensure that protective services are promptly provided if:

(A) After an APS worker conducts an investigation under § 7-1904, the Department determines that an adult is in need of protective services due to abuse, neglect, or exploitation by a third party;

(B) The adult in need of protective services, or a person authorized by law or court order to consent to the provision of protective services on behalf of the adult, affirmatively consents to the particular services offered;

(C) Reasonable access is not denied by a 3rd person; and

(D) The adult in need of protective services, if not indigent and exigent circumstances do not dictate otherwise, agrees to reimburse the District or make a reasonable contribution pursuant to the rules to be issued under § 7-1909(3).

(2) The Department’s legal obligation to ensure the provision of protective services shall, except as provided in § 7-1912(c)(1), not exceed 90 days of services for each adult found to be in need of protective services. This 90-day

limitation shall begin with the 1st day of services, apply to only those days on which services are actually provided, and include any days on which services are provided under a protection order issued pursuant to § 7-1906 or § 7-1907. The Department's decision to limit services in a particular case to fewer than 90 days, its determination as to the type or level of services provided, and allegations of noncompliance with this chapter are judicially reviewable only in accordance with § 7-1912(c)(1).

(a-1) Subject to the availability of resources, the Department may provide protective services if:

(1) After an APS worker conducts an investigation under § 7-1904, the Department determines that an adult is in need of protective services due to self-neglect;

(2) The adult in need of protective services, or a person authorized by law or court order to consent to the provision of protective services on behalf of the adult, affirmatively consents to the particular services offered;

(3) Reasonable access is not denied by a third person; and

(4) The adult in need of protective services, if not indigent and exigent circumstances do not dictate otherwise, agrees to reimburse the District or make reasonable contribution pursuant to the rules issued under § 7-1909.

(b) If an adult in need of protective services due to abuse, neglect, self-neglect, or exploitation objects to the provision of particular services and it does not manifestly appear to the APS worker that the adult is incapacitated or that the objection is prompted by fear or intimidation instilled by another, the adult shall be entitled to refuse those services and this right of refusal shall be fully respected.

(c) In any case under this section involving abuse, neglect, or exploitation by a third party that does not meet the requirements of subsection (a)(1) of this section, the Department or other agency designated by the Mayor may provide protective services only after the Attorney General obtains a protection order pursuant to § 7-1906 or § 7-1907.

(c-1) In any case under this section involving self-neglect, if an APS worker has good cause to believe that an adult is incapacitated, the APS worker, the Department, or the Attorney General may:

(1) Petition the court for appointment of a guardianship of the adult or a conservatorship of the estate of the adult (or a limited guardianship or conservatorship) under Chapter 20 of Title 21;

(2) Make referrals or provide information about the adult and the investigation to the appropriate public or private agencies, and monitor the results of any such referrals, as appropriate;

(3) Provide protective services to the extent possible under the circumstances; or

(4) Provide protective services when and if a person authorized by law or court order to consent to the provision of protective services on behalf of the adult, affirmatively consents to the particular services offered.

(d) In accordance with procedures to be established under § 7-1909(1), the Mayor shall ensure that, when appropriate, an APS worker is accompanied by a police officer while providing protective services.

(e) When determining the appropriateness of particular services, the Department or other designated agency shall first consider those protective services that encourage maximum self-determination and are least restrictive of personal liberty.

(f) No provision of subsections (a-1) or (c-1) of this section shall be construed to create an entitlement (either direct or implied) on the part of any individual or family to any services under this chapter for an adult who meets the criteria for self-neglect or who is determined to be at risk due to self-neglect.

(Mar. 14, 1985, D.C. Law 5-156, § 6, 32 DCR 13; Mar. 8, 2006, D.C. Law 16-67, § 2(e), 53 DCR 40.)

Section references. — This section is referred to in §§ 7-1904, 7-1906, 7-1909, and 7-1912.

Prior Codifications. — 1981 Ed., § 6-2505.

Effect of amendments. — D.C. Law 16-67, in subsec. (a)(1)(A), substituted “services due to abuse, neglect, or exploitation by a third party;” for “services;”; added subsecs. (a-1), (c-1), and (f); and rewrote subsecs. (b) and (c).

Legislative history of Law 5-156. — For legislative history of D.C. Law 5-156, see Historical and Statutory Notes following § 7-1901.

Legislative history of Law 16-67. — For Law 16-67, see notes following § 7-1901.

Editor’s notes. — Delayed application of Law 5-156: See Historical and Statutory Notes following § 7-1901.

§ 7-1906. Provisional protection order.

(a) If requested by the Department, either on its own behalf or on behalf of another public or private agency designated by the Mayor, the Attorney General shall promptly conduct a factual inquiry and, if legally supportable, file a petition in court for a provisional protection order. That petition shall state, insofar as the facts can be ascertained with reasonable diligence:

(1) The name, age, physical description, and location of the adult determined by the Department to be in need of protective services;

(2) Whether the adult and any other person(s) expected to be a party to the proceeding are indigent and therefore entitled to the appointment of counsel under subsection (b) of this section;

(3) Facts to substantiate that the adult is in need of protective services;

(4) The particular protective services or other relief sought to remedy or substantially reduce the likelihood of abuse, neglect, self-neglect, or exploitation by another; and

(5) Depending on the circumstances, facts to substantiate that:

(A) Failure of the adult in need of protective services to either object or affirmatively consent to those services does not constitute a knowing and voluntary decision to refuse services, but rather is the result of the adult’s inability to consent due to extreme physical or mental impairment or incapacity;

(B) The adult in need of protective services has objected to the provision of those services out of fear or intimidation instilled by another; or

(C) Reasonable access to the adult in need of protective services has been denied by a 3rd person.

(b) Unless continued by the court, a nonjury hearing shall be held on a petition for a provisional protection order within 15 days (excluding Saturdays, Sundays, and legal holidays) after it is filed with the court. The Attorney

General shall ensure that, at least 10 days (excluding Saturdays, Sundays, and legal holidays) before the hearing, notice of the hearing date and a copy of the petition are served on the adult in need of protective services and, if applicable and ascertainable with reasonable diligence, the person(s) allegedly responsible for the abuse, neglect, or exploitation, for using fear or intimidation to coerce the adult's objection to the provision of services, or for denying an APS worker reasonable access to the adult. Notice shall be effected by personal service, substitute service on a person of suitable age and discretion at the usual place of abode or employment of the person to be notified, or registered or certified mail. Pursuant to rules to be established by the court, subpoenas shall issue directing the appearance of persons whose presence at the hearing is essential to the relief sought in the petition. The adult in need of protective services and any other person on whom notice is served under this subsection shall have the right to retain counsel, and if indigent, to have counsel promptly appointed by the court upon the Attorney General's filing of a petition under subsection (a) of this section. Every effort shall be made to secure the presence of the adult in need of protective services at the hearing; failure of the adult to appear shall be explained by his or her counsel to the satisfaction of the court. All parties to the proceeding may present evidence and cross-examine witnesses. Testimony of the person(s) allegedly responsible for the abuse, neglect, or exploitation, and the fruits of that testimony, shall be inadmissible as evidence in a subsequent criminal trial except in a prosecution for perjury or false statement.

(c) The court shall maintain a register of lawyers who have expressed an interest in representing indigent persons entitled to the appointment of counsel under subsection (b) of this section, and shall attempt insofar as possible to make appointments from this register. Publicly funded or pro bono legal services shall be considered and given priority by the court. If such services are unavailable, compensation for appointed counsel shall be at the hourly rate established pursuant to § 11-2604(a), and, unless expressly waived by the court, shall be subject to a maximum amount of \$750 per proceeding. Counsel shall also be reimbursed for expenses reasonably incurred. Compensation for investigative, expert, and other services shall be in accordance with § 11-2605. This subsection shall be implemented pursuant to procedures established by the court.

(d) If the court finds that the Attorney General has proven the averments in the petition by a preponderance of the evidence, it may:

(1) Direct any person to refrain from abusing, neglecting, exploiting, directly or indirectly interfering with the provision of services to, residing with, or otherwise contacting the adult in need of protective services;

(2) Direct a caregiver to fulfill his, her, or its legal or contractual responsibilities, or to refrain from inadequately carrying out voluntarily assumed responsibilities;

(3) Direct the Mayor to petition for the appointment of a conservator or guardian;

(4) Direct the Mayor to provide specified or unspecified protective services, including at night and on weekends if necessary; provided, that the court

shall not direct the Mayor to provide a type of service not otherwise made available by the District government;

(5) Direct the Mayor, a caregiver, or, when appropriate, another party to the proceeding to remove the adult in need of protective services to a hospital, nursing home, community residence facility, hospice, or other appropriate facility (except a facility or part of a facility that has as its principal purpose the diagnosis and treatment of mental illnesses and disorders), so long as the placement is the least restrictive setting available in which the adult's needs can be adequately met;

(6) Direct any person to pay or reimburse the District, in accordance with § 7-1910, for relief granted under paragraph (4) or (5) of this subsection; or

(7) Direct any combination of the above.

(e) When granting relief under subsection (d)(3) through (5) of this section, the court shall first consider those remedies that encourage maximum self-determination and are least restrictive of personal liberty. In so doing, the court shall adopt a strong, rebuttable presumption in favor of home care over institutionalization. Secondly, the court shall inquire about and take into consideration potential expense to the District.

(f) The court may modify or rescind a provisional protection order upon the motion of any party to the original proceeding and for good cause shown. Except as provided in subsection (g) of this section, a provisional protection order granting the relief in subsection (d)(4) or (5) of this section shall remain effective as to that relief for such period up to 45 calendar days as the court may specify, except that on the motion of any party to the original proceeding and for good cause shown, the court may grant a single extension for a period not to exceed an additional 45 calendar days. This 90-day time limitation may not be circumvented by the attempted issuance of a new order or reissuance of the original order before or after the extension period has expired. Relief granted under subsection (d)(1) through (3) and (6) of this section shall remain effective for such period as the court may specify.

(g) When determining the duration of a provisional protection order that directs the Mayor to provide protective services, the court shall take into account the number of days, if any, that the District has already provided services pursuant to § 7-1905(a) or § 7-1907, and in no event shall the issuance of a protection order result in the District's being required to provide more than 90 days of services in any particular case.

(Mar. 14, 1985, D.C. Law 5-156, § 7, 32 DCR 13; Mar. 8, 2006, D.C. Law 16-67, § 2(f), 53 DCR 40.)

Section references. — This section is referred to in §§ 7-1905 and 7-1907.

Prior Codifications. — 1981 Ed., § 6-2506.

Effect of amendments. — D.C. Law 16-67, in the lead-in text of subsec. (a), subsec. (b), and subsec. (d), substituted "Attorney General" for "Corporation Counsel"; in subsec. (b), substituted "Attorney General's" for "Corporation Counsel's"; in subsec. (a)(4), substituted "neglect, self-neglect" for "neglect"; and, in subsec.

(a)(5)(A), substituted "impairment or incapacity" for "impairment".

Legislative history of Law 5-156. — For legislative history of D.C. Law 5-156, see Historical and Statutory Notes following § 7-1901.

Legislative history of Law 16-67. — For Law 16-67, see notes following § 7-1901.

Editor's notes. — Delayed application of Law 5-156: See Historical and Statutory Notes following § 7-1901.

§ 7-1907. **Ex parte temporary protection order.**

(a) If a petition filed in accordance with § 7-1906(a) is supported by affidavit and alleges the existence of an immediate, substantial risk of life-threatening harm to an adult who the Department has determined is in need of protective services, the court may, upon a finding of probable cause and in accordance with § 7-1906(e), grant any relief listed in § 7-1906(d) immediately and without a hearing by issuing an ex parte temporary protection order. The Attorney General shall ensure that, within 48 hours after the issuance of such an order, notice of the hearing date and copies of the petition, supporting affidavit(s), and order are served on the same parties and in the same manner described in § 7-1906(b).

(b) An ex parte temporary protection order shall remain effective for such period as the court may specify until a hearing is held and the petition for a provisional protection order granted or denied pursuant to § 7-1906. The court may modify or rescind an ex parte temporary protection order upon the motion of any person and for good cause shown.

(Mar. 14, 1985, D.C. Law 5-156, § 8, 32 DCR 13; Mar. 8, 2006, D.C. Law 16-67, § 2(g), 53 DCR 40.)

Section references. — This section is referred to in §§ 7-1905 and 7-1906.

Prior Codifications. — 1981 Ed., § 6-2507.

Effect of amendments. — D.C. Law 16-67, in subsec. (a), substituted “Attorney General” for “Corporation Counsel”.

Legislative history of Law 5-156. — For

legislative history of D.C. Law 5-156, see Historical and Statutory Notes following § 7-1901.

Legislative history of Law 16-67. — For Law 16-67, see notes following § 7-1901.

Editor’s notes. — Delayed application of Law 5-156: See Historical and Statutory Notes following § 7-1901.

§ 7-1908. **Qualified immunity for person reporting alleged abuse.**

Any person who reports an alleged case of abuse, neglect, self-neglect, or exploitation pursuant to § 7-1903 shall be immune from civil or criminal liability for so reporting if he, she, or it has acted in good faith.

(Mar. 14, 1985, D.C. Law 5-156, § 9, 32 DCR 13; Mar. 8, 2006, D.C. Law 16-67, § 2(h), 53 DCR 40.)

Prior Codifications. — 1981 Ed., § 6-2508.

Effect of amendments. — D.C. Law 16-67 substituted “neglect, self-neglect,” for “neglect.”

Legislative history of Law 5-156. — For legislative history of D.C. Law 5-156, see Historical and Statutory Notes following § 7-1901.

Legislative history of Law 16-67. — For Law 16-67, see notes following § 7-1901.

Editor’s notes. — Delayed application of Law 5-156: See Historical and Statutory Notes following § 7-1901.

§ 7-1909. **Rules.**

(a) The Mayor shall, pursuant to subchapter I of Chapter 5 of Title 2, issue rules deemed necessary to carry out the purposes of this chapter. These rules shall at a minimum include procedures to ensure:

(1) The effective coordination of investigative efforts by the police and the

Department and the availability of police assistance should it be required, pursuant to §§ 7-1904(a) and 7-1905(d);

(2) The effective coordination of interdepartmental resources and actions when a report made to the Department alleges that an individual, facility, or agency licensed by the District of Columbia is responsible for the abuse, neglect, or exploitation of an impaired adult;

(3) That, unless exigent circumstances dictate otherwise, nonindigent adults in need of protective services and persons legally responsible for providing any or all of the services provided or contracted for by the District reimburse the District for, or make a reasonable contribution toward, the cost of providing those services;

(4) The effective coordination of interdepartmental resources and actions when the Department seeks records or documents in the possession of another agency, including exempting the Department from payment of any and all fees otherwise required to obtain a record if the request is made in the course of an investigation or of the provision of protective services by the Department, and ensuring that requests for records or documents by the Department are given high priority by other governmental agencies; and

(5) The effective coordination of interdepartmental resources and actions, providing for expedited access to governmental services on behalf of an adult in need of protective services, and ensuring that requests for such services are given high priority by other governmental agencies.

(b) Within 60 days of March 8, 2006, the Mayor shall issue rules necessary to implement the provisions of D.C. Law 16-67.

(Mar. 14, 1985, D.C. Law 5-156, § 10, 32 DCR 13; Mar. 8, 2006, D.C. Law 16-67, § 2(i), 53 DCR 40; Mar. 2, 2007, D.C. Law 16-191, § 129, 53 DCR 6794.)

Section references. — This section is referred to in §§ 7-1904, 7-1905, and 7-1910.

Prior Codifications. — 1981 Ed., § 6-2509.

Effect of amendments. — D.C. Law 16-67, designated the existing text as subsec. (a); in the lead-in text of subsec. (a), deleted “no later than October 1, 1985,” following “Mayor shall,”; rewrote subsec. (a)(2); in subsec. (a)(3), substituted “services,” for “services.”; and added subsecs. (a)(4), (5), and (b). Prior to amendment, subsec. (a)(2) read as follows: “(2) The effective coordination of interdepartmental resources and actions when a report made to the Department alleges that an individual, facility, or agency licensed by the Department of Con-

sumer and Regulatory Affairs is responsible for the abuse, neglect, or exploitation of an impaired adult; and”.

D.C. Law 16-191, in subsec. (a), deleted “and” preceding “pursuant to”.

Legislative history of Law 5-156. — For legislative history of D.C. Law 5-156, see Historical and Statutory Notes following § 7-1901.

Legislative history of Law 16-67. — For Law 16-67, see notes following § 7-1901.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 7-103.

Editor's notes. — Delayed application of Law 5-156: See Historical and Statutory Notes following § 7-1901.

§ 7-1910. Payment or reimbursement for cost of protective services.

(a) In implementing § 7-1909(3), the Mayor may establish a sliding scale based on one's ability to pay. No adult in need of protective services shall be denied those services because he or she is unable to pay for them or because a person (other than the adult) who is legally responsible for providing any or all of the services refuses to reimburse the District or contribute to their cost. The

Attorney General may, either as part of a proceeding for a protection order or in an independent court action, seek an order directing the adult in need of protective services or person(s) legally responsible for those services to pay or reimburse the District for so much of the cost of providing protective services under this chapter as he or she is reasonably able to afford. The court, however, may not direct an adult in need of protective services to pay or reimburse the District for any of the cost of providing those services if the court orders the services over the continued objection of the adult after finding that the objection has been prompted by fear or intimidation instilled by another.

(b) The Attorney General may, either as part of a proceeding for a protection order or in an independent court action, seek an order directing the person(s) responsible for an adult's abuse, neglect, or exploitation to pay or reimburse the District for all or part of the costs associated with conducting the investigation, appointing counsel, and providing protective services in that particular case. In so doing, the Attorney General shall have the burden of proving a person's responsibility for abuse, neglect, or exploitation by a preponderance of the evidence. Testimony of the defendant(s), and the fruits of that testimony, shall be inadmissible as evidence in a subsequent criminal trial except in a prosecution for perjury or false statement.

(Mar. 14, 1985, D.C. Law 5-156, § 11, 32 DCR 13; Mar. 8, 2006, D.C. Law 16-67, § 2(j), 53 DCR 40.)

Section references. — This section is referred to in § 7-1906.

Prior Codifications. — 1981 Ed., § 6-2510.

Effect of amendments. — D.C. Law 16-67, in subssecs. (a) and (b), substituted "Attorney General" for "Corporation Counsel".

Legislative history of Law 5-156. — For

legislative history of D.C. Law 5-156, see Historical and Statutory Notes following § 7-1901.

Legislative history of Law 16-67. — For Law 16-67, see notes following § 7-1901.

Editor's notes. — Delayed application of Law 5-156: See Historical and Statutory Notes following § 7-1901.

§ 7-1911. Waiver of privilege.

Any professional covered by the privilege established in § 14-307, who has or had as his or her client or patient the adult alleged or determined to be in need of protective services may be required, without the consent of that adult or his or her legal representative, to testify or otherwise disclose confidential information in any court proceeding held pursuant to this chapter if the judge determines that the privilege should be waived in the interest of justice.

(Mar. 14, 1985, D.C. Law 5-156, § 12, 32 DCR 13.)

Prior Codifications. — 1981 Ed., § 6-2511.

Legislative history of Law 5-156. — For legislative history of D.C. Law 5-156, see Historical and Statutory Notes following § 7-1901.

Editor's notes. — Delayed application of Law 5-156: See Historical and Statutory Notes following § 7-1901.

§ 7-1912. Penalties; enforcement.

(a)(1) Any person required to report under § 7-1903(a)(1) who willfully fails to do so shall be guilty of a misdemeanor and, upon conviction, subject to a fine not exceeding \$300.

(2) Any person who willfully makes a report under § 7-1903 containing information that he or she knows to be false shall be guilty of a misdemeanor and, upon conviction, subject to a fine not exceeding \$1,000.

(3) Any person who willfully discloses, receives, uses, or permits the use of a report, investigative information, or other data in violation of § 7-1903(d) shall be guilty of a misdemeanor and, upon conviction, subject to a fine not exceeding \$1,000.

(4) Any person who, because of a report made under § 7-1903 or testimony given in support of the allegations contained in such a report, retaliates against any other person by taking action that adversely affects the latter's rights, privileges, living arrangement, or terms of employment shall be civilly liable for any damages caused by that retaliation and, in addition, subject to punitive damages not exceeding \$5,000.

(5) Any health-care administrator or health professional licensed in the District who willfully fails to make a report required by § 7-1903(a)(1), or willfully makes a report under § 7-1903 containing information that he or she knows to be false, shall be guilty of unprofessional conduct and subject to any sanction available to the governmental board, commission, or other authority responsible for his or her licensure.

(b) Criminal prosecutions brought under subsection (a) of this section shall be in the Superior Court of the District of Columbia by information signed by the Attorney General.

(c)(1) Any person who is aggrieved by a violation of this chapter, or who is acting on or in behalf of a person aggrieved by a violation of this chapter, may maintain an action in court to enjoin the continuation of that violation or the commission of any future violation. In any such action that challenges the adequacy of protective services provided under § 7-1905(a), the court may direct the Mayor to provide additional or different services only upon a finding of bad-faith noncompliance. Should such a finding be made, days on which, in the opinion of the court, the services provided were grossly inadequate shall not be counted against the 90-day limitation in § 7-1905(a)(2). Actions brought under this paragraph shall, commensurate with the exigency of the circumstances alleged, be expedited pursuant to procedures to be established by the court.

(2) No right to monetary relief shall lie against the District for a violation of this chapter. Denial of such a right, however, shall in no way be construed to limit or impede any other action for monetary relief that might be available pursuant to other federal or District law.

(Mar. 14, 1985, D.C. Law 5-156, § 13, 32 DCR 13; Mar. 8, 2006, D.C. Law 16-67, § 2(k), 53 DCR 40; Mar. 25, 2009, D.C. Law 17-353, § 102(b), 56 DCR 1117.)

Section references. — This section is referred to in § 7-1905.

Prior Codifications. — 1981 Ed., § 6-2512.

Effect of amendments. — D.C. Law 16-67,

in subsec. (b), substituted "Attorney General" for "Corporation Counsel".

D.C. Law 17-353 validated a previously made technical correction in subsec. (b).

Legislative history of Law 5-156. — For legislative history of D.C. Law 5-156, see Historical and Statutory Notes following § 7-1901.

Legislative history of Law 16-67. — For Law 16-67, see notes following § 7-1901.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 7-161.

Editor's notes. — Delayed application of Law 5-156: See Historical and Statutory Notes following § 7-1901.

§ 7-1913. Reporting to Council.

The Mayor shall submit to the Council an annual report on this chapter, which shall at a minimum include the following:

(1) A description of the specific actions taken to implement this chapter, including the staffing pattern and budget of the responsible administrative unit;

(2) An analysis by fiscal year of:

(A) The number of cases reported, investigations conducted, and reports substantiated;

(B) The characteristics of both substantiated and unsubstantiated cases, including a breakdown by age, impairment, individual reporting, police involvement, services refused, and type of abuse, neglect, or exploitation involved;

(C) The number of cases referred to court, the reasons for referral, their outcome, and associated court costs;

(D) The type, amount, and cost of protective services provided;

(E) The percentage of cost reimbursed by or recouped from 3rd parties;

(F) The status of substantiated cases at the end of 90 days of services, and the average number of days of services per case;

(G) The effectiveness with which government agencies and private organizations collaborate to investigate cases and administer protective services, including any proposals to improve coordination of efforts; and

(H) The resources needed by the Department to conduct investigations and provide services as authorized by and required under this chapter; and

(3) Any recommendations for amendments to this chapter.

(Mar. 14, 1985, D.C. Law 5-156, § 14, 32 DCR 13; Mar. 8, 2006, D.C. Law 16-67, § 2(1), 53 DCR 40.)

Prior Codifications. — 1981 Ed., § 6-2513.

Effect of amendments. — D.C. Law 16-67, in the lead-in text, substituted “The Mayor shall submit to the Council an annual” for “No later than October 1, 1987, the Mayor shall prepare and submit to the Council a”; in pars. (2)(E) and (F), deleted “and” from the end; and added pars. (2)(G) and (H).

Legislative history of Law 5-156. — For legislative history of D.C. Law 5-156, see Historical and Statutory Notes following § 7-1901.

Legislative history of Law 16-67. — For Law 16-67, see notes following § 7-1901.

Editor's notes. — Delayed application of Law 5-156: See Historical and Statutory Notes following § 7-1901.

CHAPTER 19A. COMMUNITY HEALTH CARE FINANCING FUND.

Sec.

7-1931. Community Health Care Financing Fund; establishment, purpose.

7-1932. Authorization of grants.

Sec.

7-1933. Rand Corporation Assessment Advisory Committee.

§ 7-1931. Community Health Care Financing Fund; establishment, purpose.

(a) There is hereby established within the General Fund a special nonlapsing interest earning account to be designated as the Community Health Care Financing Fund ("Fund"), into which the Chief Financial Officer shall deposit all:

(1) Proceeds received by the District from the sale by the District of Columbia Tobacco Settlement Financing Corporation of its Tobacco Settlement Asset-Backed Bonds, Series 2006;

(2) Receipts from any fees and taxes specifically identified by District law to be paid into the Fund;

(3) All payments received from Greater Southeast Investment, L.P., relating to its loans of approximately \$49 million to Specialty Hospitals of America, LLC, or certain of its subsidiaries; and

(4) The District's share of any proceeds arising from a disposition of all or any part of the land and improvements on Lots 3 and 4, Square 5919.

(b) The purposes of the Fund shall be to directly pay to promote health care and for the delivery of health care related services in the District, including the construction of health care facilities and the operation of health care related programs, or to reimburse any account of the General Fund for its expenditures for these purposes.

(c) All interest generated by the Fund shall be retained by the Fund.

(Mar. 14, 2007, D.C. Law 16-288, § 101, 54 DCR 976; July 18, 2008, D.C. Law 17-186, § 2, 55 DCR 6113.)

Effect of amendments. — D.C. Law 17-186, in subsec. (a), deleted "and" from the end of par. (1), substituted a semicolon for a period at the end of par. (2), and added pars. (3) and (4).

Temporary legislation. — For temporary (225 day) addition, see § 4 of East of the River Hospital Revitalization Tax Exemption Temporary Amendment Act of 2007 (D.C. Law 17-76, January 23, 2008, law notification 55 DCR 1456).

Emergency legislation. — For temporary (90 day) addition, see § 4 of East of the River Hospital Revitalization Tax Exemption Emergency Amendment Act of 2007 (D.C. Act 17-174, November 2, 2007, 54 DCR 11216).

Legislative history of Law 16-288. — Law 16-288, the "Community Access to Health Care Amendment Act of 2006", was introduced in Council and assigned Bill No. 16-913, which was referred to Committee on Human Services.

The Bill was adopted on first and second readings on November 14, 2006, and December 5, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-647 and transmitted to both Houses of Congress for its review. D.C. Law 16-288 became effective on March 14, 2007.

Legislative history of Law 17-186. — Law 17-186, the "East of the River Hospital Revitalization Tax Exemption Amendment Act of 2008", was introduced in Council and assigned Bill No. 17-464 which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on April 1, 2008, and May 6, 2008, respectively. Signed by the Mayor on May 20, 2008, it was assigned Act No. 17-380 and transmitted to both Houses of Congress for its review. D.C. Law 17-186 became effective on July 18, 2008.

Short title. — Short title: Section 10021 of

D.C. Law 19-21 provided that subtitle C of title X of the act may be cited as "Special Purpose Fund Transfer Act of 2011".

Delegation of Authority. — Delegation of Authority pursuant to D.C. Law 16-288, the Community Access to Health Amendment Act of 2006, see Mayor's Order 2007-82, April 2, 2007 (54 DCR 7811).

Editor's notes. — Section 10022 of D.C. Law 19-21 provided: "Sec. 10022. Notwithstanding any provision of law limiting the use

of funds in the Community Health Care Financing Fund established by section 101 of the Community Access to Health Care Omnibus Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-288; D.C. Official Code § 7-1931), the Chief Financial Officer shall transfer, from the certified resources of the Community Health Care Financing Fund, to the unrestricted fund balance of the General Fund, and recognize as revenue in fiscal year 2012, \$5.126 million."

§ 7-1932. Authorization of grants.

(a) The Mayor is authorized to make grants from the Fund and to enter into agreements with the recipients of the grants containing any terms and conditions that the Mayor determines necessary or appropriate to effect a purpose of the Fund, as described in § 7-1931(b).

(b) Of the funds available, the Mayor shall:

(1) Reserve up to \$116 million for construction of health care facilities, subject to subsection (c) of this section. Any grant awarded pursuant to this paragraph shall be awarded through competitive bidding in accordance with Unit A of Chapter 3 of Title 2 [§ 2-301.01 et seq.]. Notwithstanding the preceding provisions of this paragraph, the Mayor may invest, subject to approval by the Council, up to \$79 million to capitalize a public-private partnership by non-competitive negotiations with Specialty Hospitals of America, LLC, or certain of its subsidiary entities, to acquire, improve, and operate Greater Southeast Community Hospital; provided, that notwithstanding any agreement regarding the repayment of funds associated with this public-private partnership, beginning in calendar year 2009, repayment by Specialty Hospitals of America, LLC, or certain of its subsidiaries, of the \$20 million working capital loan shall be deferred until December 31, 2015, at which time the originally agreed to repayment schedule shall resume.

(2) Reserve up to \$80 million for urgent and emergent care upgrades, subject to subsection (c) of this section. Any grant awarded pursuant to this paragraph shall be awarded through competitive bidding in accordance with Unit A of Chapter 3 of Title 2 [§ 2-301.01 et seq.];

(3) Reserve \$4.6 million to fund a comprehensive chronic disease management and prevention program related to the 10 leading causes of death in the District of Columbia to be administered by nonprofit organizations in partnership with the Department of Health. Any grant awarded pursuant to this paragraph shall be awarded through competitive bidding in accordance with Unit A of Chapter 3 of Title 2 [§ 2-301.01 et seq.];

(4) Grant \$16.5 million to the D.C. Cancer Consortium to implement a comprehensive cancer prevention program, subject to subsection (d) of this section; provided, that \$750,000 shall be utilized during fiscal year 2010 to support tobacco cessation programs including the DC Quitline and free nicotine replacement programs for District residents.

(5) Grant \$10 million to the American Lung Association of the District of Columbia to implement a tobacco cessation program in partnership with the American Cancer Society, subject to subsection (d) of this section;

(6) Grant \$6 million to the District of Columbia Primary Care Association (“DCPCA”), subject to subsection (d) of this section, for the purpose of establishing a regional health information exchange program, which shall be modeled on other regional health information organizations that have been established in other regions around the United States, among community health centers, hospitals, physician practices, and other health care providers to improve patient coordination of care and health outcomes and to build a secure database of patient health information that can be used for disease surveillance, quality-monitoring, policy-making, and clinical research; the DCPCA shall partner with the National Institute of Medical Informatics to develop a regional health information organization, with DCPCA initially acting as fiscal agent and subsequently sub-granting the funds to the regional health information organization once it is staffed;

(7) Grant up to \$1.5 million to the Rand Corporation, subject to subsection (d) of this section, for the following purposes:

(A) Conducting a comprehensive assessment of the District’s health care delivery system for individuals with urgent or emergent medical needs and recommending improvements and expansions of that system;

(B) Conducting a comprehensive assessment of the health care needs in Wards 7 and 8 and making recommendations to address the identified health care needs in those Wards; and

(C) Providing an analysis of the ongoing operating and capital costs associated with the development of ambulatory health care centers and of other health care facilities, including the Healthplex model;

(8) Grant \$1.5 million for the purpose of procuring emergency transport vehicles; subject to the completion of a deployment plan that indicates annual operating costs, staffing requirements, and maintenance costs;

(9) For fiscal year 2010, grant \$750,000 to support operational expenses associated with the Medical Homes DC Initiative, subject to subsection (d) of this section; and

(10) For fiscal year 2011:

(A) Allocate \$4.4 million to support health services at the D.C. Jail; and

(B) Allocate \$1 million to support the District’s AIDS Drug Assistance Program.

(c)(1) Use of the reserved funds as authorized by subsection (b)(1) and (2) of this section shall be contingent upon the findings of the comprehensive assessment described in subsection (b)(7) of this section.

(2) The Mayor is authorized to issue a request for proposals based upon the findings of the comprehensive assessment described in subsection (b)(7) of this section to promote health care and for the delivery of health care related services in the District, including the construction of health care facilities and the operation of health care related programs.

(3) Any reserved funds authorized by subsection (b)(1) and (2) of this section made available to Greater Southeast Community Hospital shall be contingent upon the condition that Greater Southeast Community Hospital changes ownership.

(4) Notwithstanding any other provision of this chapter, the Mayor is authorized to enter into a public/private partnership with a new owner of

Greater Southeast Community Hospital to assure the continued operation of the District's existing programs (the psychiatric unit, clinics-primary care, specialty unit, and corrections unit) and the operation of planned programs (the comprehensive psychiatric emergency program, the expansion of the psychiatric unit, and a Detox unit) that are at, or planned for, the hospital, as well as other future programs, and the delivery of quality health care for the District's residents living in the far northeast and southeast areas of the District; provided, that any public/private partnership requires that any new hospital constructed on the Greater Southeast Community Hospital campus integrate all of the mentioned existing and planned programs into the new facility; provided further, that the operating costs associated with the services described herein shall not come from the Tobacco Settlement Trust Fund established by § 7-1811.01.

(d)(1) A grant awarded pursuant to subsection (b)(4),(5), (6), (7), or (9) of this section shall be awarded through noncompetitive negotiations; provided, that the grant be submitted to the Council for a 10-day period of review, excluding days of Council recess.

(2) If the Council does not approve or disapprove the grant by resolution within the 10-day review period, the grant shall be deemed approved.

(Mar. 14, 2007, D.C. Law 16-288, § 102, 54 DCR 976; June 5, 2008, D.C. Law 17-167, § 2, 55 DCR 5178; Mar. 25, 2009, D.C. Law 17-353, § 167(a), 56 DCR 1117; Mar. 3, 2010, D.C. Law 18-111, §§ 5101, 5161, 57 DCR 181; Sept. 24, 2010, D.C. Law 18-223, § 5132, 57 DCR 6242; Apr. 8, 2011, D.C. Law 18-370, § 802(b), 58 DCR 1008.)

Effect of amendments. — D.C. Law 17-167, in subsec. (b)(1), substituted "Title 2. Notwithstanding the preceding provisions of this paragraph, the Mayor may invest, subject to approval by the Council, up to \$79 million to capitalize a public-private partnership by non-competitive negotiations with Specialty Hospitals of America, LLC, or certain of its subsidiary entities, to acquire, improve, and operate Greater Southeast Community Hospital;" for "Title 2;"; and, in subsec. (c)(3), deleted "and the findings of the comprehensive assessment described in subsection (b)(7) of this section" following "ownership".

D.C. Law 17-353 validated a previously made technical correction in the punctuation in subsec. (c)(4).

D.C. Law 18-111, in subsec. (b)(1), substituted "Community Hospital; provided, that notwithstanding any agreement regarding the repayment of funds associated with this public-private partnership, beginning in calendar year 2009, repayment by Specialty Hospitals of America, LLC, or certain of its subsidiaries, of the \$20 million working capital loan shall be deferred until December 31, 2015; at which time the originally agreed to repayment schedule shall resume." for "Community Hospital;"; and, in subsec. (b)(4), substituted "subject to

subsection (d) of this section; provided, that \$750,000 shall be utilized during fiscal year 2010 to support tobacco cessation programs including the DC Quitline and free nicotine replacement programs for District residents." for "subject to subsection (d) of this section."; added subsec. (b)(9); in subsec. (d)(1), substituted "subsection (b)(4),(5), (6), (7), or (9) of this section" for "subsection (b)(4),(5), (6) or (7) of this section".

D.C. Law 18-223, in subsec. (a), substituted "\$4.6 million" for "10 million"; and, in subsec. (b), deleted "and" from the end of par. (8); substituted "; and" for a period at the end of par. (9), and added par. (10).

D.C. Law 18-370, in subsec. (b)(4), substituted "\$16.5 million" for "\$20 million".

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 2 of (D.C. Law 17-71, January 23, 2008, law notification 55 DCR 1451).

Sections 3 and 4 of D.C. Law 18-154 substituted "Community Hospital; provided, that notwithstanding any agreement regarding the repayment of funds associated with this public-private partnership, beginning in calendar year 2009, repayment by Specialty Hospitals of America, LLC, or certain of its subsidiaries, of the \$20 million working capital loan shall be

deferred until December 31, 2015, at which time the originally agreed to repayment schedule shall resume; provided further, that the Mayor may withdraw the deferment and re-establish the loan repayment schedule.” for “Community Hospital.”

Section 8(b) of D.C. Law 18-154 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2 of East of the River Hospital Revitalization Emergency Amendment Act of 2007 (D.C. Act 17-168, October 19, 2007, 54 DCR 10978).

For temporary (90 day) amendment of section, see § 2 of East of the River Hospital Revitalization Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-249, January 23, 2008, 55 DCR 1255).

For temporary (90 day) amendment of section, see §§ 5101, 5161 of Fiscal Year 2010 Budget Support Second Emergency Act of 2009 (D.C. Act 18-207, October 15, 2009, 56 DCR 8234).

For temporary (90 day) amendment of section, see §§ 5101, 5161 of Fiscal Year Budget Support Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-260, January 4, 2010, 57 DCR 345).

For temporary (90 day) amendment of section, see §§ 3, 4 of Healthy DC Equal Access Fund and Hospital Stabilization Emergency Amendment Act of 2009 (D.C. Act 18-310, February 18, 2010, 57 DCR 1635).

For temporary (90 day) amendment of section, see § 5132 of Fiscal Year 2011 Budget Support Emergency Act of 2010 (D.C. Act 18-463, July 2, 2010, 57 DCR 6542).

For temporary (90 day) amendment of section, see § 802(b) of Fiscal Year 2011 Supplemental Budget Support Emergency Act of 2010 (D.C. Act 18-694, January 19, 2011, 58 DCR 662).

Legislative history of Law 16-288. — For Law 16-288, see notes following § 7-1931.

Legislative history of Law 17-167. — Law 17-167, the “East of the River Hospital Revitalization Amendment Act of 2008”, was intro-

duced in Council and assigned Bill No. 17-484 which was referred to the Committee on Health. The Bill was adopted on first and second readings on March 4, 2008, and April 1, 2008, respectively. Signed by the Mayor on April 14, 2008, it was assigned Act No. 17-341 and transmitted to both Houses of Congress for its review. D.C. Law 17-167 became effective on June 5, 2008.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 7-161.

Legislative history of Law 18-111. — For Law 18-111, see notes following § 7-736.01.

Legislative history of Law 18-223. — For Law 18-223, see notes following § 7-1401.

Legislative history of Law 18-370. — For history of Law 18-370, see notes under § 7-751.11.

Short title. — Short title: Section 5100 of D.C. Law 18-111 provided that subtitle K of title V of the act may be cited as the “Community Access to Health Care Amendment Act of 2009”.

Short title: Section 5160 of D.C. Law 18-111 provided that subtitle Q of title V of the act may be cited as the “Community Access to Health Care United Medical Center Amendment Act of 2009”.

Short title: Section 5131 of D.C. Law 18-223 provided that subtitle N of title V of the act may be cited as the “Community Access to Health Care Amendment Act of 2010”.

Short title: Section 801 of D.C. Law 18-370 provided that title VIII of the act may be cited as “Fiscal Year 2011 Transfer of Special Purpose Funds Act of 2010”.

Delegation of Authority. — Delegation of Authority pursuant to D.C. Law 16-288, the Community Access to Health Amendment Act of 2006, see Mayor’s Order 2008-74, May 2, 2008 (55 DCR 6930).

Delegation of Authority pursuant to D.C. Law 16-288, the Community Access to Health Amendment Act of 2006, see Mayor’s Order 2008-108, August 12, 2008 (55 DCR 9391).

Mayor’s Orders. — Re-establishment—The Loan Repayment Schedule, see Mayor’s Order 2010-70, April 28, 2010 (57 DCR 4674).

§ 7-1933. Rand Corporation Assessment Advisory Committee.

(a) There is established an advisory committee to provide oversight and review of the assessment and analysis described in § 7-1932(b)(7). The advisory committee shall consist of 5 members, 2 of whom shall be appointed by the Mayor and 3 of whom shall be appointed by the Council.

(b) The advisory committee shall meet at a regular time and place to be determined by the committee. The advisory committee shall dissolve when its oversight and review role is complete.

(Mar. 14, 2007, D.C. Law 16-288, § 103, 54 DCR 976; Mar. 25, 2009, D.C. Law 17-353, § 167(b), 56 DCR 1117.)

Effect of amendments. — D.C. Law 17-353 validated a previously made technical correction in subsec. (a).

Legislative history of Law 16-288. — For Law 16-288, see notes following § 7-1931.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 7-161.

Editor's notes. — Because of the enactment of subchapter II of Chapter 36 of Title 6 subchapter II of Chapter 20 of Title 7, 2001 Ed. by D.C. Law 12-215, the preexisting text §§ 7-2001 to 7-2008, 2001 Ed. has been designated as subchapter I.

CHAPTER 20. CHILD CARE SERVICES AND FACILITIES.

Subchapter I. Child Care Services Assistance Fund

- Sec.
 7-2001. Definitions.
 7-2002. Child Care Services Assistance Fund; established.
 7-2003. Sources of funding.
 7-2004. Eligibility.
 7-2005. Repayment.
 7-2006. Disclaimer of liability.
 7-2007. Rules.
 7-2008. Annual report by Mayor.

Subchapter II. Child Development Facilities Regulation

- 7-2031. Definitions.
 7-2032. Applicability and scope.
 7-2033. Exemptions.
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- perintendent of Education; continuation.
 7-2034. License required.
 7-2035. Licenses issued pursuant to prior law.
 7-2036. Powers and duties of the Mayor.
 7-2037. Variances.
 7-2038. License renewal.
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 7-2041. Summary suspension.
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 7-2047. Prosecutions.
 7-2048. Injunctions.
 7-2049. Repeal of existing regulations.
 7-2050. Pending actions and proceedings; existing orders.

*Subchapter I. Child Care Services Assistance Fund.***§ 7-2001. Definitions.**

- (a) "Child" means "child" as defined in § 4-401(1).
 (b) "Child development center" means "child development center" as defined in § 4-401(2).
 (c) "Child development home" means "child development home" as defined in § 4-401(3).
 (d) "Fund" means the Child Care Services Assistance Fund established by § 7-2002.
 (e) "Person" means an individual, partnership, association, or corporation.

(Mar. 16, 1989, D.C. Law 7-220, § 2, 36 DCR 550.)

Prior Codifications. — 1981 Ed., § 6-3601.

Legislative history of Law 7-220. — Law 7-220, the "Child Care Services Assistance Fund Act of 1988," was introduced in Council and assigned Bill No. 7-405, which was referred to the Committee on Human Services. The Bill

was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-295 and transmitted to both Houses of Congress for its review.

§ 7-2002. Child Care Services Assistance Fund; established.

- (a) There is established a revolving Child Care Services Assistance Fund, to be administered by the Mayor, for the purpose of providing loans and grants of up to \$500,000 to open new child care facilities or to expand, repair, or improve existing child care facilities in the District, including a child development center or a child development home.

(b) There is authorized to be appropriated out of the revenue of the District an amount necessary to carry out the purposes of this subchapter.

(Mar. 16, 1989, D.C. Law 7-220, § 3, 36 DCR 550; Mar. 2, 2007, D.C. Law 16-192, § 5183, 53 DCR 6899.)

Section references. — This section is referred to in § 7-2001.

Prior Codifications. — 1981 Ed., § 6-3602.

Effect of amendments. — D.C. Law 16-192, in subsec. (a), substituted “up to \$500,000” for “up to \$10,000”.

Temporary Amendment of Section. — For temporary (225 day) amendment of section, see § 3 of Day Care Grant-Making and Rulemaking Temporary Amendment Act of 2006 (D.C. Law 16-156, September 19, 2006, law notification 53 DCR 7928).

Emergency legislation. — For temporary (90 day) amendment of section, see § 5183 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-477, August 8, 2006, 53 DCR 7068).

For temporary (90 day) amendment of section, see § 5183 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2006 (D.C. Act 16-499, October 23, 2006, 53 DCR 8845).

For temporary (90 day) amendment of sec-

tion, see § 5183 of Fiscal Year 2007 Budget Support Congressional Review Emergency Act of 2007 (D.C. Act 17-1, January 16, 2007, 54 DCR 1165).

Legislative history of Law 7-220. — For legislative history of D.C. Law 7-220, see Historical and Statutory Notes following § 7-2001.

Legislative history of Law 16-192. — For Law 16-192, see notes following § 7-751.16a.

Delegation of Authority. — Delegation of authority pursuant to D.C. Law 7-220, the “Child Care Services Assistance Fund Act of 1988”, see Mayor’s Order 89-131, June 9, 1989.

Delegation of Mayor’s Authority to Administer the Child Care Services Assistance Fund to the office of the State Superintendent of Education, see Mayor’s Order 2008-91, June 24, 2008 (55 DCR 9371).

Editor’s notes. — Because of the codification of D.C. Law 12-215 as subchapter II of this chapter, and the designation of the preexisting text as subchapter I, “subchapter” has been substituted for “chapter” in subsection (b).

§ 7-2003. Sources of funding.

The fund shall consist of, but not be limited to, money from the following sources:

- (1) Appropriations;
- (2) Grants or gifts from public or private sources to the fund or to the District for the purposes of the fund;
- (3) Repayments of principal and interest on loans provided from the fund;
- (4) Proceeds realized from the liquidation of a security interest held by the District on loans made from the fund;
- (5) Interest earned on the deposit or investment of money from the fund; and
- (6) All other revenue, receipts, or fees derived from the operation of the fund.

(Mar. 16, 1989, D.C. Law 7-220, § 4, 36 DCR 550.)

Prior Codifications. — 1981 Ed., § 6-3603.

Legislative history of Law 7-220. — For

legislative history of D.C. Law 7-220, see Historical and Statutory Notes following § 7-2001.

§ 7-2004. Eligibility.

(a) In order to be eligible for a loan or grant from the fund, the applicant shall:

- (1) Be a District resident who is current in the payment of all taxes and

other obligations owed to the District, except that a corporation, association, or partnership must be organized and doing business in the District;

(2) Obtain, from sources other than the fund, money to finance no less than 25% of the cost of the project; and

(3) Submit to the Mayor, for approval, a business plan, which shall include an estimated schedule for completion of the project, the estimated number of children to be served, and the designation of the proposed site in the District.

(b) Each project financed by the fund shall comply with § 6-1401 et seq., and the Child Development Facilities Regulation, effective December 14, 1974 (Regulation No. 74-34; 21 DCR 1333).

(c) The applicant shall obtain insurance as required by the Mayor and indemnify the District from any liability arising out of the operation of the facility.

(d) In order to be eligible for a grant from the fund, the applicant must be a non-profit organization.

(Mar. 16, 1989, D.C. Law 7-220, § 5, 36 DCR 550.)

Prior Codifications. — 1981 Ed., § 6-3604. legislative history of D.C. Law 7-220, see Historical and Statutory Notes following § 7-2001.
Legislative history of Law 7-220. — For

§ 7-2005. Repayment.

(a) For each loan issued under this subchapter, the Mayor shall arrange a repayment schedule.

(b) Each loan granted from the fund shall be recorded as a lien against the real and personal property of the applicant.

(Mar. 16, 1989, D.C. Law 7-220, § 6, 36 DCR 550.)

Prior Codifications. — 1981 Ed., § 6-3605. tion of D.C. Law 12-215 as subchapter II of this chapter, the designation of the preexisting text as subchapter I, “subchapter” has been substituted for “chapter” in subsection (a).
Legislative history of Law 7-220. — For legislative history of D.C. Law 7-220, see Historical and Statutory Notes following § 7-2001.

Editor’s notes. — Because of the codifica-

§ 7-2006. Disclaimer of liability.

A person who receives a loan or grant from the fund shall not be considered an agent or instrumentality of the District as a result of the receipt of the loan.

(Mar. 16, 1989, D.C. Law 7-220, § 7, 36 DCR 550.)

Prior Codifications. — 1981 Ed., § 6-3606. legislative history of D.C. Law 7-220, see Historical and Statutory Notes following § 7-2001.
Legislative history of Law 7-220. — For

§ 7-2007. Rules.

Within 120 days of March 16, 1989, the Mayor shall, pursuant to subchapter I of Chapter 5 of Title 2, issue proposed rules to implement the provisions of this subchapter. The proposed rules shall be submitted to the Council for a

45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(Mar. 16, 1989, D.C. Law 7-220, § 8, 36 DCR 550.)

Prior Codifications. — 1981 Ed., § 6-3607.
Legislative history of Law 7-220. — For legislative history of D.C. Law 7-220, see Historical and Statutory Notes following § 7-2001.
Editor's notes. — Because of the codification of D.C. Law 12-215 as subchapter II of this chapter, the designation of the preexisting text as subchapter I, "subchapter" has been substituted for "chapter" in the first sentence.

§ 7-2008. Annual report by Mayor.

The mayor shall submit to the Council, no later than 6 months after the end of each fiscal year, a report on the financial condition of the fund and the results of the operation of the fund for the fiscal year.

(Mar. 16, 1989, D.C. Law 7-220, § 9, 36 DCR 550.)

Prior Codifications. — 1981 Ed., § 6-3608.
Legislative history of Law 7-220. — For legislative history of D.C. Law 7-220, see Historical and Statutory Notes following § 7-2001.

Subchapter II. Child Development Facilities Regulation.

§ 7-2031. Definitions.

For the purposes of this subchapter, the term:

- (1) "Care giver" means an individual whose duties include direct care, supervision, and guidance of infants or children in a child development facility.
- (2) "Child" or "children" means an individual or individuals from 2 years to 15 years of age.
- (3) "Child development facility" means a center, home, or other structure that provides care and other services, supervision, and guidance for children, infants, and toddlers on a regular basis, regardless of its designated name. "Child development facility" does not include a public or private elementary or secondary school engaged in legally required educational and related functions or a pre-kindergarten education program licensed pursuant to the Pre-k Act of 2008.
- (4) "Infant" means an individual younger than 12 months of age.
- (5) "Licensee" means a child development facility that is licensed pursuant to this subchapter.
- (6) "Person" means any individual, firm, partnership, company, corporation, trustee, or association.
- (6A) "Pre-k Act of 2008" means Chapter 2A of Title 38 [§ 38-271.01 et seq.].
- (7) "Related person" means any legal guardian or any of the following relationships established by marriage, adoption, or blood to the 5th degree:
 - (A) Parent or step-parent;
 - (B) Grandparent;

(C) Brother, sister, step-sister, or step-brother;

(D) Uncle or aunt; or

(E) Niece or nephew.

(8) “Toddler” means an individual older than 12 months but less than 24 months of age.

(Apr. 13, 1999, D.C. Law 12-215, § 2, 46 DCR 274; July 18, 2008, D.C. Law 17-202, § 603(a), 55 DCR 6297.)

Prior Codifications. — 1981 Ed., § 6-3621.

Effect of amendments. — D.C. Law 17-202, in par. (3), substituted “related functions or a pre-kindergarten education program licensed pursuant to the Pre-k Act of 2008” for “related functions”; and added par. (6A).

Temporary Addition of Section. — For temporary (225 day) addition of §§ 7-2031 to 7-2050, see §§ 2 to 21 of Child Development Facilities Regulation Temporary Act of 1997 (D.C. Law 12-71, March 20, 1998, law notification 45 DCR 2106).

Emergency legislation. — For temporary regulation of child development facilities, see §§ 2-21 of the Child Development Facilities Regulation Emergency Act of 1997 (D.C. Act 12-206, December 15, 1997, 44 DCR 346).

For temporary addition of subchapter II, see §§ 2-21 of the Child Development Facilities Regulation Emergency Act of 1998 (D.C. Act 12-511, November 10, 1998, 45 DCR 8153), and §§ 2-21 of the Child Development Facilities Regulation Congressional Review Emergency Act of 1999 (D.C. Act 13-11, February 8, 1999, 46 DCR 2322).

Legislative history of Law 12-215. — Law 12-215, the “Child Development Facilities Regulation Act of 1998,” was introduced in Council and assigned Bill No. 12-325, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on October 6, 1998, and November 10, 1998, respectively. Signed by the Mayor on December 9, 1998, it was assigned Act No. 12-530 and transmitted to both Houses of Congress for its review. D.C. Law 12-215 became effective on April 13, 1999.

Legislative history of Law 17-202. — For Law 17-202, see notes following § 7-863.03a.

Delegation of Authority. — Delegation of authority pursuant to D.C. Act 13-11, the “Child Development Facilities Regulation Congressional Review Emergency Amendment Act of 1999,” see Mayor’s Order 99-66, April 28, 1999 (46 DCR 4231).

Delegation of authority pursuant to D.C. Law 12-215, the “Child Development Facilities Regulation Act of 1998,” see Mayor’s Order 2000-124, August 3, 2000 (47 DCR 6808).

§ 7-2032. Applicability and scope.

(a) This subchapter shall apply to every child development facility and care giver in the District of Columbia.

(b) Unless exempted by this subchapter or the laws of other jurisdictions, the provisions and requirements in this subchapter shall also apply to all child development facilities operated by the District government outside the District of Columbia.

(Apr. 13, 1999, D.C. Law 12-215, § 3, 46 DCR 274.)

Prior Codifications. — 1981 Ed., § 6-3622.

Temporary Addition of Section. — See notes to § 7-2031.

Emergency legislation. — For temporary addition of subchapter, see notes to § 7-2031.

Legislative history of Law 12-215. — For legislative history of D.C. Law 12-215, see Historical and Statutory Notes following § 7-2031.

§ 7-2033. Exemptions.

The provisions of this subchapter shall not apply to the following:

(1) Occasional babysitting in a babysitter’s home for the children of one family;

- (2) Informal parent-supervised neighborhood play groups;
- (3) Care furnished in places of worship during religious services;
- (4) Care given by an individual who is related to the child, infant, or toddler;
- (5) Child development facilities operated by the federal government on federal government property; however, a private child care provider utilizing space in or on federal government property is not exempt unless federal law specifically exempts the facility from the District's regulatory authority; or
- (6) Pre-kindergarten education programs licensed pursuant to Chapter 2A of Title 38.

(Apr. 13, 1999, D.C. Law 12-215, § 4, 46 DCR 274; July 18, 2008, D.C. Law 17-202, § 603(b), 55 DCR 6297.)

Prior Codifications. — 1981 Ed., § 6-3623.
Effect of amendments. — D.C. Law 17-202, in par. (4), deleted “or” from the end; in par. (5), substituted “; or” for a period at the end; and added par. (6).
Temporary Addition of Section. — See notes to § 7-2031.

Emergency legislation. — For temporary addition of subchapter, see notes to § 7-2031.
Legislative history of Law 12-215. — For legislative history of D.C. Law 12-215, see Historical and Statutory Notes following § 7-2031.
Legislative history of Law 17-202. — For Law 17-202, see notes following § 7-863.03a.

§ 7-2033.01. Transfers of personnel, property, and funds from Department of Health to Office of the State Superintendent of Education; continuation.

(a) All positions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available to the Department of Health that support the functions related to the licensure of child-care programs in the Early Care and Education Administration and the Early Intervention Program shall be transferred to the Office of the State Superintendent of Education, established by § 38-2601, within 60 days of July 18, 2008.

(b) All rules, orders, obligations, determinations, grants, contracts, licenses, and agreements of the Department of Health, the Department of Human Services, the Board of Education, or the District of Columbia Public Schools relating to the functions transferred to the Office of the State Superintendent of Education pursuant to subsection (a) of this section shall remain in effect according to their terms until lawfully amended, repealed, or modified.

(Apr. 13, 1999, D.C. Law 12-215, § 4a, as added July 18, 2008, D.C. Law 17-202, § 603(c), 55 DCR 6297.)

Legislative history of Law 17-202. — For Law 17-202, see notes following § 7-863.03a.

§ 7-2034. License required.

(a) Except as otherwise provided in this subchapter, no person shall, either

directly or indirectly, operate a child development facility in the District without first having obtained a license to do so.

(b) An applicant for a license to operate a child development facility shall establish to the satisfaction of the Mayor, that the facility meets all requirements set forth in this subchapter and rules adopted pursuant to this subchapter.

(c) An applicant for a license shall:

(1) Submit an application to the Mayor on a form required and provided by the Mayor;

(2) Submit supporting documentation required by the Mayor; and

(3) Pay the applicable fee established by the Mayor, except that no license fee shall be required of any child development facility operated by the District government.

(d) The license shall be valid for a period of time to be determined by the Mayor and only for the premises and persons named as applicants in the application. Any change in ownership of a licensee owned by a person or in the legal or beneficial ownership of a percentage of stock established by rule of a corporate licensee shall require relicensure.

(e) The Mayor may authorize the issuance of provisional and restricted licenses under specific circumstances and criteria to be established by rule.

(Apr. 13, 1999, D.C. Law 12-215, § 5, 46 DCR 274.)

Prior Codifications. — 1981 Ed., § 6-3624.

Temporary Addition of Section. — See notes to § 7-2031.

Emergency legislation. — For temporary addition of subchapter, see notes to § 7-2031.

Legislative history of Law 12-215. — For legislative history of D.C. Law 12-215, see Historical and Statutory Notes following § 7-2031.

§ 7-2035. Licenses issued pursuant to prior law.

Except as otherwise provided by this subchapter, any child development facility licensed pursuant to the Child Development Facilities Regulation, enacted December 14, 1974 (Reg. 74-34; 29 DCMR § 300 et seq.) (“Child Development Facilities Regulation”), as amended, shall be considered licensed pursuant to this subchapter and shall be subject to renewal requirements established pursuant to this subchapter.

(Apr. 13, 1999, D.C. Law 12-215, § 6, 46 DCR 274.)

Prior Codifications. — 1981 Ed., § 6-3625.

Temporary Addition of Section. — See notes to § 7-2031.

Emergency legislation. — For temporary addition of subchapter, see notes to § 7-2031.

Legislative history of Law 12-215. — For legislative history of D.C. Law 12-215, see Historical and Statutory Notes following § 7-2031.

§ 7-2036. Powers and duties of the Mayor.

(a) The Mayor shall promulgate all rules necessary to implement the provisions of this subchapter, including the following:

(1) Minimum standards of operation of a child development facility concerning staff qualification, requirements and training, facility size, staff-

child ratios and group size, program design and equipment requirements, safety and health standards, care for children with special needs, nutrition standards, and record keeping requirements;

(2) Administrative procedures for hearings consistent with the requirements of § 2-509, unless otherwise provided in this subchapter;

(3) Allowance for a child development facility to operate on a 24-hour basis so long as no child, infant, or toddler will be under the care of the child development facility for more than 18 consecutive hours in a 24-hour period, or appropriate hours as provided by rule; and

(4) The establishment of a fee schedule to recover the costs of regulating child development facilities pursuant to this subchapter.

(b) The Mayor may conduct investigations and inspections needed to ensure compliance with this subchapter. In this regard, the Mayor may administer oaths, examine witnesses, and issue subpoenas to compel attendance and testimony of witnesses and the production of books, records, and other documents needed to enforce this subchapter. In case of contumacy or refusal to obey a subpoena, the Superior Court of the District of Columbia, at the request of the Mayor, shall issue an order requiring the contumacious person to appear and testify or produce books, papers, or other evidence bearing on the hearing. Failure to obey the court's order shall be punishable as contempt of court.

(c) The Mayor shall maintain and make available to the public information concerning:

(1) The application, licensure, and renewal requirements and procedures; and

(2) An official register of currently licensed child development facilities.

(Apr. 13, 1999, D.C. Law 12-215, § 7, 46 DCR 274.)

Prior Codifications. — 1981 Ed., § 6-3626.
Temporary Addition of Section. — See notes to § 7-2031.

Emergency legislation. — For temporary addition of subchapter, see notes to § 7-2031.

Legislative history of Law 12-215. — For legislative history of D.C. Law 12-215, see Historical and Statutory Notes following § 7-2031.

Delegation of Authority. — Delegation of authority pursuant to D.C. Law 12-215, the "Child Development Facilities Regulation Act of 1998", see Mayor's Order 99-199, December 24, 1999 (46 DCR 10569).

Delegation of Authority to Conduct Investigations of Unusual Incident Reports Submitted by Childcare Providers and any Other Person(s) or Entity(s) on Behalf of the Early Care and Education Administration for a Period Not to Exceed Ninety (90) Days from the Effective Date of this Order, see Mayor's Order 2009-12, February 4, 2009 (56 DCR 2031).

Delegation of Authority pursuant to D.C. Law 12-215, the Child Development Facilities Regulation Act of 1998, as amended, see Mayor's Order 2009-130, July 16, 2009 (56 DCR 6883).

§ 7-2037. Variances.

An applicant operating a child development facility prior to July 1, 1975, may be granted a variance from the physical or structural requirements of any rule adopted pursuant to this subchapter upon a determination by the Mayor that full compliance would result in exceptional and undue hardship. Any variance shall be granted in accordance with procedures established by rule.

(Apr. 13, 1999, D.C. Law 12-215, § 8, 46 DCR 274.)

Prior Codifications. — 1981 Ed., § 6-3627.

Temporary Addition of Section. — See notes to § 7-2031.

Emergency legislation. — For temporary addition of subchapter, see notes to § 7-2031.

Legislative history of Law 12-215. — For legislative history of D.C. Law 12-215, see Historical and Statutory Notes following § 7-2031.

§ 7-2038. License renewal.

(a) A license shall be renewed in accordance with rules established pursuant to this subchapter, unless there is a pending disciplinary action by the Mayor.

(b) An application for renewal of a license shall be submitted to the Mayor no later than 90 days before expiration of the license on a form provided by the Mayor with the appropriate renewal fee. An application for renewal fewer than 90 days after expiration, shall be renewed in accordance with renewal requirements established by rule, including the payment of the renewal fee and any late penalty.

(c) A child development facility holding a valid license at the time of application for renewal shall continue to operate as licensed until the Mayor acts on the renewal application.

(Apr. 13, 1999, D.C. Law 12-215, § 9, 46 DCR 274.)

Prior Codifications. — 1981 Ed., § 6-3628.

Temporary Addition of Section. — See notes to § 7-2031.

Emergency legislation. — For temporary addition of subchapter, see notes to § 7-2031.

Legislative history of Law 12-215. — For legislative history of D.C. Law 12-215, see Historical and Statutory Notes following § 7-2031.

§ 7-2039. Denial of a license.

The Mayor may, subject to the right to a hearing, deny an initial or renewal license to an applicant who fails to establish that the applicant meets the requirements for licensure established by this subchapter and rules issued pursuant to this subchapter.

(Apr. 13, 1999, D.C. Law 12-215, § 10, 46 DCR 274.)

Prior Codifications. — 1981 Ed., § 6-3629.

Temporary Addition of Section. — See notes to § 7-2031.

Emergency legislation. — For temporary addition of subchapter, see notes to § 7-2031.

Legislative history of Law 12-215. — For legislative history of D.C. Law 12-215, see Historical and Statutory Notes following § 7-2031.

§ 7-2040. Revocation, suspension, denial of license.

The Mayor may, subject to the right to a hearing, refuse to issue, revoke, suspend, or deny renewal of a license to operate a child development facility to a person who is found to have:

- (1) Failed to comply with the provisions of this subchapter and any rules or regulations promulgated pursuant to this subchapter;
- (2) Failed to comply with other federal and District laws applicable to child development facilities;
- (3) Committed, aided, abetted, or permitted to be committed any act of

dishonesty, fraud, gross negligence, abuse, assault, battery, or other illegal acts related to the operation of the facility; or

(4) Been convicted of a crime involving moral turpitude.

(Apr. 13, 1999, D.C. Law 12-215, § 11, 46 DCR 274.)

Prior Codifications. — 1981 Ed., § 6-3630.
Temporary Addition of Section. — See notes to § 7-2031.

Legislative history of Law 12-215. — For legislative history of D.C. Law 12-215, see Historical and Statutory Notes following § 7-2031.

Emergency legislation. — For temporary addition of subchapter, see notes to § 7-2031.

§ 7-2041. Summary suspension.

(a) If, after an investigation, the Mayor determines that a licensee has failed to comply with the provisions of this subchapter or any rules promulgated pursuant to this subchapter in such a manner as to present an imminent danger to the health, safety, and welfare of children, infants, toddlers, or the general public, the Mayor may summarily suspend or restrict the license prior to a hearing.

(b) The Mayor must provide the licensee with written notice of the summary suspension initiated pursuant to subsection (a) of this section, the reason for the suspension, and the right to request a hearing.

(c) The licensee shall have 5 days after service of the notice of the summary suspension in which to request a hearing to challenge the summary suspension. A hearing shall be held within 5 business days of a timely request and the Mayor shall issue a decision within 5 business days after closing the record.

(Apr. 13, 1999, D.C. Law 12-215, § 12, 46 DCR 274.)

Prior Codifications. — 1981 Ed., § 6-3631.
Temporary Addition of Section. — See notes to § 7-2031.

Legislative history of Law 12-215. — For legislative history of D.C. Law 12-215, see Historical and Statutory Notes following § 7-2031.

Emergency legislation. — For temporary addition of subchapter, see notes to § 7-2031.

§ 7-2042. Cease and desist orders.

(a) If, after investigation, the Mayor determines that a person has violated any provision of this subchapter or any rule issued pursuant to this subchapter, and the violation presents an imminent danger to the public, the Mayor may issue a written order directing the person to cease and desist from the violation.

(b) Within 5 days of service of the cease and desist order, the person shall request an expedited hearing on the violation. If no request for a hearing is made within the 5-day period, the cease and desist order shall be final. Within 5 business days of a timely request for an expedited hearing, the Mayor shall conduct a hearing.

(Apr. 13, 1999, D.C. Law 12-215, § 13, 46 DCR 274.)

Prior Codifications. — 1981 Ed., § 6-3632.
Temporary Addition of Section. — See notes to § 7-2031.

Emergency legislation. — For temporary addition of subchapter, see notes to § 7-2031.

Legislative history of Law 12-215. — For legislative history of D.C. Law 12-215, see Historical and Statutory Notes following § 7-2031.

§ 7-2043. Right of entry and inspection.

To ensure compliance with the provisions of this subchapter and rules adopted pursuant to this subchapter, the Mayor, or any duly authorized designee, shall be permitted at reasonable times to conduct an inspection of any child development facility licensed pursuant to this subchapter or for which a license application has been filed.

(Apr. 13, 1999, D.C. Law 12-215, § 14, 46 DCR 274.)

Prior Codifications. — 1981 Ed., § 6-3633.
Temporary Addition of Section. — See notes to § 7-2031.

Emergency legislation. — For temporary addition of subchapter, see notes to § 7-2031.

Legislative history of Law 12-215. — For legislative history of D.C. Law 12-215, see Historical and Statutory Notes following § 7-2031.

§ 7-2044. Hearings.

(a) Exception as provided in § 7-2041, before the Mayor denies an application, suspends, revokes, or restricts a license, or imposes a civil fine, the Mayor shall give the person notice of the contemplated action and an opportunity for a hearing. The Mayor shall send all notices by certified mail. Notice of a scheduled hearing shall be sent by certified mail at least 20 days before the hearing date except when an expedited hearing has been requested. The Mayor may request all parties to participate in a settlement conference prior to a hearing and may enter into a negotiated settlement agreement or consent decree in lieu of a hearing.

(b) The Mayor may delegate the authority to conduct a hearing and issue a final decision to an administrative law judge or an attorney examiner in accordance with rules issued pursuant to this subchapter.

(Apr. 13, 1999, D.C. Law 12-215, § 15, 46 DCR 274.)

Prior Codifications. — 1981 Ed., § 6-3634.
Temporary Addition of Section. — See notes following § 7-2031.

Emergency legislation. — For temporary addition of subchapter, see notes to § 7-2031.

Legislative history of Law 12-215. — For legislative history of D.C. Law 12-215, see Historical and Statutory Notes following § 7-2031.

§ 7-2045. Judicial review.

A person aggrieved by a final decision of the Mayor may appeal the decision to the District of Columbia Court of Appeals pursuant to § 2-510.

(Apr. 13, 1999, D.C. Law 12-215, § 16, 46 DCR 274.)

Prior Codifications. — 1981 Ed., § 6-3635.
Temporary Addition of Section. — See notes to § 7-2031.
Emergency legislation. — For temporary addition of subchapter, see notes to § 7-2031.

Legislative history of Law 12-215. — For legislative history of D.C. Law 12-215, see Historical and Statutory Notes following § 7-2031.

§ 7-2046. Criminal and civil penalties.

(a) Any person who violates any provision of this subchapter shall, upon conviction, be subject to imprisonment not to exceed 6 months or a fine not to exceed \$300, or both. Each unlawful act shall constitute a separate violation of this subchapter.

(b) Any person who has been previously convicted pursuant to this subchapter shall, upon conviction, be subject to imprisonment not to exceed one year or a fine not to exceed \$5,000, or both.

(c) Civil fines and penalties may be imposed as alternative sanctions for any violations of the provisions of this subchapter or rules issued under the authority of this subchapter pursuant to Chapter 18 of Title 2 (“Civil Infractions Act”). The adjudication of any infraction issued pursuant to the Civil Infractions Act shall be pursuant to of the Civil Infractions Act.

(Apr. 13, 1999, D.C. Law 12-215, § 17, 46 DCR 274.)

Prior Codifications. — 1981 Ed., § 6-3636.
Temporary Addition of Section. — See notes to § 7-2031.
Emergency legislation. — For temporary addition of subchapter, see notes to § 7-2031.

Legislative history of Law 12-215. — For legislative history of D.C. Law 12-215, see Historical and Statutory Notes following § 7-2031.

§ 7-2047. Prosecutions.

(a) Prosecutions of violations of this subchapter shall be brought by the Corporation Counsel in the name of the District of Columbia.

(b) In prosecutions initiated pursuant to this subchapter, a child development facility claiming an exemption from a licensing requirement of this subchapter shall have the burden of proving entitlement to the exemption.

(Apr. 13, 1999, D.C. Law 12-215, § 18, 46 DCR 274.)

Prior Codifications. — 1981 Ed., § 6-3637.
Temporary Addition of Section. — See notes to § 7-2031.
Emergency legislation. — For temporary addition of subchapter, see notes to § 7-2031.

Legislative history of Law 12-215. — For legislative history of D.C. Law 12-215, see Historical and Statutory Notes following § 7-2031.

§ 7-2048. Injunctions.

(a) The Corporation Counsel may bring an action in the Superior Court of the District of Columbia in the name of the District of Columbia to enjoin any violation of this subchapter.

(b) Remedies established by this section shall be in addition to criminal sanctions, civil sanctions, or disciplinary action initiated by the Mayor.

(c) In any proceeding brought pursuant to this section, it shall not be necessary to prove that any person has been injured by the violation alleged.

(Apr. 13, 1999, D.C. Law 12-215, § 19, 46 DCR 274.)

Prior Codifications. — 1981 Ed., § 6-3638.

Temporary Addition of Section. — See notes to § 7-2031.

Emergency legislation. — For temporary addition of subchapter, see notes to § 7-2031.

Legislative history of Law 12-215. — For legislative history of D.C. Law 12-215, see Historical and Statutory Notes following § 7-2031.

§ 7-2049. Repeal of existing regulations.

The Child Development Facilities Regulation shall remain in effect until superseded by rules issued by the Mayor. Upon the effective date of rules promulgated pursuant to this subchapter, the Child Development Facilities Regulation shall be deemed repealed.

(Apr. 13, 1999, D.C. Law 12-215, § 20, 46 DCR 274.)

Prior Codifications. — 1981 Ed., § 6-3639.

Temporary Addition of Section. — See notes to § 7-2031.

Emergency legislation. — For temporary addition of subchapter, see notes to § 7-2031.

Legislative history of Law 12-215. — For legislative history of D.C. Law 12-215, see Historical and Statutory Notes following § 7-2031.

Delegation of Authority. — Delegation of authority pursuant to D.C. Act 12-206, the “Child Development Facilities Regulation Emergency Act of 1997”, see Mayor’s Order 98-43, April 7, 1998 (45 DCR 2688).

§ 7-2050. Pending actions and proceedings; existing orders.

(a) No judicial or administrative proceeding commenced by or against any child development facility, or officer or employee of a child development facility in his or her official capacity, shall abate by reason of the taking effect of this subchapter; but the action or proceeding shall be continued with substitution as to parties and officers or agencies as are appropriate.

(b) All decisions issued pursuant to the Child Development Facilities Regulation shall continue in effect until modified, rescinded, or superseded by rules or regulation issued pursuant to this subchapter.

(Apr. 13, 1999, D.C. Law 12-215, § 21, 46 DCR 274.)

Prior Codifications. — 1981 Ed., § 6-3640.

Temporary Addition of Section. — See notes to § 7-2031.

Emergency legislation. — For temporary addition of subchapter, see notes to § 7-2031.

For temporary (90 day) criminal background check provisions, see §§ 201 to 214 of Child and

Youth, Safety and Health Omnibus Emergency Amendment Act of 2002 (D.C. Act 14-310, March 26, 2002, 49 DCR 3420).

Legislative history of Law 12-215. — For legislative history of D.C. Law 12-215, see Historical and Statutory Notes following § 7-2031.

CHAPTER 20A. HEALTH CARE OMBUDSMAN PROGRAM.

| Sec. | Sec. |
|--|--|
| 7-2071.01. Definitions. | 7-2071.08. Immunity from liability. |
| 7-2071.02. Establishment of Health Care Ombudsman Program. | 7-2071.09. Non-retaliation. |
| 7-2071.03. Program evaluation. | 7-2071.10. Requirements for health benefits plans and HealthCare Alliance. |
| 7-2071.04. Duties. | 7-2071.11. Advisory Council. |
| 7-2071.05. Public outreach. | 7-2071.12. Funding for the Ombudsman Program. |
| 7-2071.06. Data collection and reporting. | 7-2071.13. [Repealed]. |
| 7-2071.07. Access to records; confidentiality. | |

§ 7-2071.01. Definitions.

For the purposes of this chapter, the term:

(1) "Accessible" means providing:

(A) The program's written materials in Spanish and English, and in other languages when required by Title VI of the Civil Rights Act of 1964, approved July 2, 1964 (78 Stat. 252; 42 U.S.C. § 2000d et seq.) ("Title VI"), or District law;

(B) Interpreters to communicate with consumers in Spanish, and in other languages when required by Title VI or District law; and

(C) TTY services and other accommodations for individuals with disabilities in accordance with the Americans with Disabilities Act of 1990, approved July 26, 1990 (104 Stat. 327; 42 U.S.C. § 12101 et seq.).

(2) "Consumer" means:

(A) An uninsured resident of the District, including residents enrolled in the HealthCare Alliance; or

(B) An individual covered by a health benefits plan in the District.

(3) "Department" means the Department of Health.

(4) "District" means the District of Columbia.

(5) "Health benefits plan" means a group or individual insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or similar group arrangement provided by an insurer, or subcontracting facility of an insurer, or an employer for the purpose of providing, paying for, or reimbursing expenses for health-related services. The term "health benefits plan" shall include health coverage provided through a government program, including Medicaid. The term "health benefits plan" shall not include disability income or accident-only insurance.

(6) "Health Care Ombudsman" or "Ombudsman" means the individual responsible for running the Health Care Ombudsman Program.

(7) "Health Care Ombudsman Program" or "Ombudsman Program" means the program established by the District to counsel and assist uninsured District residents and individuals insured by health benefits plans in the District regarding matters pertaining to their health care coverage.

(8) "Health care services" means items or services provided under the supervision of a physician or other person trained or licensed to render health care necessary for the prevention, care, diagnosis, or treatment of human disease, pain, injury, deformity, or other physical or mental condition, including the following: pre-admission, outpatient, inpatient, and post-discharge

care; home care; physician's care; nursing care; medical care provided by interns or residents in training; other paramedical care; ambulance service and care; bed and board; drugs; supplies; appliances; equipment; laboratory services; any form of diagnostic imaging or therapeutic radiological services; and services mandated under Chapter 31 of Title 31.

(Apr. 12, 2005, D.C. Law 15-331, § 2, 52 DCR 1981.)

Legislative history of Law 15-331. — Law 15-331, the “Health Care Ombudsman Program Establishment Act of 2004”, was introduced in Council and assigned Bill No. 15-137 which was referred to the Committee on Finance and Revenue and the Committee on Human Services. The Bill was adopted on first

and second readings on December 7, 2004, and December 21, 2004, respectively. Signed by the Mayor on January 19, 2005, it was assigned Act No. 15-740 and transmitted to both Houses of Congress for its review. D.C. Law 15-331 became effective on April 12, 2005.

§ 7-2071.02. Establishment of Health Care Ombudsman Program.

(a) The Department shall establish the Health Care Ombudsman Program by contracting with a qualified private, community-based, nonprofit corporation, organization, or consortia of organizations, with offices located in the District, to operate the program. If the Department is unable to contract with a qualified corporation, organization, or consortia of organizations that meets the requirements of subsection (c) of this section, the Department shall operate the Ombudsman Program.

(b) The Ombudsman Program shall be administered by the Health Care Ombudsman, who shall be appointed by the Director of the Department. The Health Care Ombudsman shall be an individual with management experience and substantive experience in the fields of health care, health benefits plans, or health care advocacy. Unless the Department is operating the program, the Health Care Ombudsman shall be an employee of the nonprofit corporation, organization, or consortia of organizations selected by the Department to operate the program.

(c) The Department shall establish selection criteria for the qualified, private, nonprofit corporation, organization, or consortia of organizations that will perform the functions of the Ombudsman Program. The criteria shall include:

- (1) A public interest mission;
- (2) Qualified staff and organizational expertise in health care and health benefits plans, public education and community outreach, and problem resolution;
- (3) No direct involvement in the licensing, certification, or accreditation of a health care facility, a health benefits plan, or a provider of a health benefits plan, or with a provider of a health care service;
- (4) No direct ownership or investment interest in a health care facility, health benefits plan, or any health service;
- (5) No participation in the management of a health care service, health care facility, or health benefits plan; and
- (6) No agreement or arrangement with an owner or operator of a health

care service, health care facility, or health benefits plan that could indirectly or directly result in remuneration, in cash or in kind, to the organization.

(d) The Ombudsman Program may subcontract with advocacy organizations that are affiliated with health providers that exclusively represent the interests of consumers and do not represent the health care entity in any disputes.

(e) The Department shall accord preference in the selection process to corporations or organizations that:

(1) Have a board of directors with significant representation from District consumers;

(2) Have experience in serving District residents or have staff with experience in serving District residents; or

(3) Have expertise in health benefits plans.

(f) The Ombudsman Program may use volunteers with appropriate training and supervision to assist with counseling, outreach, and other tasks.

(Apr. 12, 2005, D.C. Law 15-331, § 3, 52 DCR 1981; Mar. 2, 2007, D.C. Law 16-191, § 35, 53 DCR 6794.)

Effect of amendments. — D.C. Law 16-191 validated previously made technical corrections in the subsection designations.

Legislative history of Law 16-191. — For Law 16-191, see notes following § 7-103.

Legislative history of Law 15-331. — For Law 15-331, see notes following § 7-2071.01.

§ 7-2071.03. Program evaluation.

(a) The Department shall develop criteria to be used in evaluating the performance of the Ombudsman Program.

(b)(1) The Department shall obtain, biannually, an independent evaluation of the Ombudsman Program through an academic group or other independent, private-sector organization, the Office of the Inspector General, or the Office of the District of Columbia Auditor. The evaluation shall take into account:

(A) The number of consumer problems handled;

(B) The success in resolving the consumer problems handled;

(C) Outreach and community education activities;

(D) Satisfaction of consumers served by the program; and

(E) The extent to which information was provided to the public and policy makers about problems faced by the consumers served.

(2) The Department shall decide whether to renew contracts based on the evaluation.

(3) The evaluation shall be available to the public upon request.

(4) The first evaluation shall take place no later than 2 years after April 12, 2005.

(Apr. 12, 2005, D.C. Law 15-331, § 4, 52 DCR 1981.)

Legislative history of Law 15-331. — For Law 15-331, see notes following § 7-2071.01.

§ 7-2071.04. Duties.

The Ombudsman Program shall provide the following accessible services:

(1) Assist consumers in resolving problems concerning health care bills, health coverage, and access to health care by referring consumers to appropriate regulatory agencies when their problems are within an agency's jurisdiction, guiding consumers through existing complaint processes, and assisting consumers in informally resolving problems through discussions with their health benefits plans, the HealthCare Alliance, or other providers;

(2) Assist consumers in understanding their rights and responsibilities as health benefits plan members, HealthCare Alliance members, or members of other provider plans, including appeal processes and how to use them, and how to access appropriate medical information;

(3) Educate consumers about health benefits plans, managed care health plans, and their health benefits plan options, or other health care options available for uninsured consumers;

(4) Comment on behalf of consumers on related health care policy legislation and regulations in the District;

(5) Help uninsured District residents access Medicaid or other health care options;

(6) Identify, investigate, and help resolve complaints on behalf of consumers and assist consumers with the filing, pursuit, and resolution of formal and informal complaints and appeals through existing processes, including internal reviews conducted by health benefits plans, grievance and appeals processes for the HealthCare Alliance, fair hearings available to Medicaid consumers, external reviews before independent review organizations, and any other administrative appeals that may be available under District or federal law;

(7) Refer consumers, when appropriate, to other existing organizations for assistance and work jointly with other consumer organizations, as appropriate;

(8) Work with health care providers to develop working relationships that enhance coordination and referrals;

(9) Make appropriate referrals to the Department of Insurance, Securities, and Banking, the Office of Fair Hearings, the Office of Administrative Hearings, the Grievance and Appeals Office of the Department of Health, Health Care Fraud Units, the Long-Term Care Ombudsman, the Health Insurance Counseling and Assistance Program serving District Medicare beneficiaries, and the Center for Health Dispute Resolution; and

(10) Provide information to the public, government agencies, the Council, and others regarding problems and concerns of consumers and make recommendations for resolving those problems and concerns.

(Apr. 12, 2005, D.C. Law 15-331, § 5, 52 DCR 1981.)

Legislative history of Law 15-331. — For Law 15-331, see notes following § 7-2071.01.

§ 7-2071.05. Public outreach.

The Ombudsman Program shall implement innovative strategies and tools to maximize its outreach to consumers, including provision of the following accessible information sources and services:

- (1) A toll-free 1-800 telephone number that operates in the District metropolitan area;
- (2) A website on the Internet;
- (3) In-person counseling;
- (4) Establishing relationships with organizations in each ward of the city to provide outreach and receive referrals;
- (5) Active liaison, partnership, and information sharing with community, consumer, health, disability, religious, ethnic-based organizations, and other organizations; and
- (6) A one-page, easy-to-read flyer describing the Ombudsman Program's services that shall be available to the public.

(Apr. 12, 2005, D.C. Law 15-331, § 6, 52 DCR 1981.)

Legislative history of Law 15-331. — For Law 15-331, see notes following § 7-2071.01.

§ 7-2071.06. Data collection and reporting.

The Health Care Ombudsman shall submit annually to the Council, the Mayor, the Department of Health, and the Department of Insurance, Securities, and Banking a report on the activities, performance, and fiscal accounts of the Ombudsman Program, issues of concern to consumers, and the Ombudsman's recommendations to improve health access. The report shall be available to the public upon request.

(Apr. 12, 2005, D.C. Law 15-331, § 7, 52 DCR 1981.)

Legislative history of Law 15-331. — For Law 15-331, see notes following § 7-2071.01.

§ 7-2071.07. Access to records; confidentiality.

(a) The Health Care Ombudsman may review the records of a health benefits plan, the HealthCare Alliance, or other provider, pertaining to a consumer or the consumer's medical records if the consumer or the consumer's legal representative has provided written consent. The confidentiality of the records shall be maintained by the Ombudsman Program in accordance with all federal and state confidentiality and disclosure laws.

(b) No information or records maintained by the program shall be disclosed to the public unless the consumer or the consumer's legal representative has consented in writing to the release of the information or records.

(c) Each District agency shall provide cooperation, assistance, and data to the Health Care Ombudsman, as requested and upon reasonable notice, necessary to enable the Ombudsman Program to investigate a consumer's complaint under applicable District or federal law.

(d) The Department shall enter into a “business associate” agreement with the Ombudsman Program that gives the program access to information about the Medicaid eligibility status of consumers whom it serves and requires the program to safeguard that information pursuant to the Health Insurance Portability and Accountability Act Privacy Regulation (45 C.F.R. Parts 160 and 164).

(Apr. 12, 2005, D.C. Law 15-331, § 8, 52 DCR 1981.)

Legislative history of Law 15-331. — For Law 15-331, see notes following § 7-2071.01.

§ 7-2071.08. Immunity from liability.

No employee, subcontractor, designee, or representative of the Ombudsman Program shall be held liable for the good faith performance of responsibilities under this chapter, except that no immunity shall extend to criminal acts, or acts that violate District or federal law.

(Apr. 12, 2005, D.C. Law 15-331, § 9, 52 DCR 1981.)

Legislative history of Law 15-331. — For Law 15-331, see notes following § 7-2071.01.

§ 7-2071.09. Non-retaliation.

A health benefits plan or the HealthCare Alliance shall not take retaliatory action of any sort against a member who seeks assistance from the Ombudsman Program or against a provider who furnishes information to the Ombudsman Program pursuant to a consumer’s request.

(Apr. 12, 2005, D.C. Law 15-331, § 10, 52 DCR 1981.)

Legislative history of Law 15-331. — For Law 15-331, see notes following § 7-2071.01.

§ 7-2071.10. Requirements for health benefits plans and HealthCare Alliance.

(a) Health benefits plans and the HealthCare Alliance shall:

(1) Include in their marketing and membership materials information regarding the availability of the Ombudsman Program;

(2) Send annually to their members notification of the availability of the Ombudsman Program; and

(3) Provide members the telephone number of the Ombudsman Program upon request.

(b) A health benefits plan may use the one-page, easy-to-read flyer developed by the Ombudsman Program to describe its services to meet the notice requirements under subsection (a)(1) and (2) of this section.

(Apr. 12, 2005, D.C. Law 15-331, § 11, 52 DCR 1981.)

Legislative history of Law 15-331. — For Law 15-331, see notes following § 7-2071.01.

§ 7-2071.11. Advisory Council.

(a) The Ombudsman shall establish an Advisory Council to consist of members representing:

- (1) Consumers;
- (2) Consumer advocacy organizations;
- (3) Health benefits plans;
- (4) Health care facilities;
- (5) Physicians;

(6) The Health Insurance Counseling and Assistance Program or any successor charged with counseling Medicare beneficiaries pursuant to section 4360 of the Omnibus Reconciliation Act of 1990, approved November 5, 1990 (104 Stat. 1388-138; 42 U.S.C. § 1395b-4);

(7) The Department of Health, including its Office of Maternal and Child Health and its Grievance and Appeals Office; and

(8) The Department of Insurance, Securities, and Banking.

(b) The Advisory Council shall perform, at minimum, the following functions:

- (1) Advise the Ombudsman on program design and operational issues;
- (2) Recommend the criteria to be used in evaluating the performance of the Ombudsman Program;
- (3) Recommend changes in the Ombudsman Program; and
- (4) Review data on cases handled by the Ombudsman Program and make recommendations based on that data.

(Apr. 12, 2005, D.C. Law 15-331, § 12, 52 DCR 1981.)

Legislative history of Law 15-331. — For Law 15-331, see notes following § 7-2071.01.

§ 7-2071.12. Funding for the Ombudsman Program.

(a) Funding sources for the Ombudsman Program shall include:

- (1) District local appropriations; and
- (2) Medicaid federal matching funds.

(b) Nothing in this chapter shall prohibit a corporation, organization, or consortia of organizations selected to operate the Health Care Ombudsman Program from raising private money through foundation resources to supplement government funds for the program.

(Apr. 12, 2005, D.C. Law 15-331, § 13, 52 DCR 1981.)

Legislative history of Law 15-331. — For Law 15-331, see notes following § 7-2071.01.

§ 7-2071.13. Contingent effectiveness of chapter. [Repealed].

Repealed.

(Apr. 12, 2005, D.C. Law 15-331, § 14, 52 DCR 1981; Aug. 16, 2008, D.C. Law 17-219, § 7046, 55 DCR 7598.)

Legislative history of Law 15-331. — For Law 15-331, see notes following § 7-2071.01.

Legislative history of Law 17-219. — For Law 17-219, see notes following § 7-651.17.

CHAPTER 21. YOUTH RESIDENTIAL FACILITIES LICENSURES.

Sec.

7-2101. Definitions.

7-2102. License requirements.

7-2103. Rules.

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Sec.

7-2105. Inspections.

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7-2107. Provisional and restricted licensure.

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§ 7-2101. Definitions.

For the purposes of this chapter, the term:

(1) “Child” means any individual who is:

(A) Under 18 years of age;

(B) 18 to 20 years of age and subject to a consent decree or dispositional order entered pursuant to Chapter 23 of Title 16; or

(C) 18 to 21 years of age and has an individualized education program pursuant to 20 U.S.C. § 1401 et seq.

(2) “Continuing care” means ongoing supervision and care designed to nurture a resident’s growth and development, meet basic health needs, and monitor applicable school or work attendance.

(3) “Court” means the Superior Court of the District of Columbia.

(4) “District” means the District of Columbia.

(5) “Emergency care” means temporary supervision and care, usually not exceeding 90 days and provided as the result of an individual or family crisis, that includes monitoring of applicable school or work attendance and an assessment of a resident’s physical, psychosocial, and educational needs.

(6) “Facility” means a youth residential facility.

(7) “Resident” means a District child residing in a youth residential facility.

(8) “Therapeutic care” means an intensive, professionally supervised program of education and treatment designed to meet a resident’s physical, psychosocial, and educational needs as identified in an individualized treatment plan and, if applicable, an individualized education program.

(9)(A) “Youth residential facility” means a residential placement providing adult supervision and care for 1 or more children who are not related by blood, marriage, guardianship, or adoption (including both final and nonfinal adoptive placements) to any of the facility’s adult caregivers and who were found to be in need of a specialized living arrangement as the result of:

(i) A detention or shelter care hearing held pursuant to § 16-2312;

(ii) A dispositional hearing held pursuant to § 16-2317;

(iii) Family crisis, homelessness, runaway status, or other circumstances creating a need for out-of-home supervision and care; or

(iv) A mental or physical disability that requires, in accordance with 20 U.S.C. § 1401 et seq., more services than can be provided by nonresidential programs.

(B) The term “youth residential facility” shall include, but not necessarily be limited to, foster homes, youth shelters, runaway shelters, emergency care facilities, youth group homes, supervised apartments, and residential

treatment centers; it shall not include informal substitute care provided by friends or neighbors or those facilities licensed under Chapter 5 of Title 44.

(Aug. 13, 1986, D.C. Law 6-139, § 2, 33 DCR 3804; Apr. 24, 2007, D.C. Law 16-305, § 28(a), 53 DCR 6198.)

Prior Codifications. — 1981 Ed., § 3-801.

Effect of amendments. — D.C. Law 16-305, in par. (9)(A)(iv), substituted “disability” for “handicap”.

Legislative history of Law 6-139. — Law 6-139, the “Youth Residential Facilities Licensure Act of 1986,” was introduced in Council and assigned Bill No. 6-224, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on

May 27, 1986, and June 10, 1986, respectively. Signed by the Mayor on June 13, 1986, it was assigned Act No. 6-177 and transmitted to both Houses of Congress for its review.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 7-531.01.

Delegation of Authority. — Delegation of authority pursuant to Law 6-139, see Mayor’s Order 86-202, November 12, 1986.

CASE NOTES

Statutory rights of action.

District of Columbia’s Youth Residential Facilities Licensure Act permits children in foster care to sue District officials to enforce not only requirements of Act itself, but also all of the provisions of Prevention of Child Abuse and Neglect Act related to “the care” of foster children. D.C. Code 1981, §§ 2-1351 to 2-1357,

3-801 to 3-808, 6-2101 to 6-2107, 6-2121 to 6-2127, 16-2351 to 16-2365. *LaShawn A. by Moore v. Kelly*, 990 F.2d 1319, 1993 U.S. App. LEXIS 7889 (C.A.D.C. 1993), writ of certiorari denied by 510 U.S. 1044, 114 S. Ct. 691, 126 L. Ed. 2d 659, 1994 U.S. LEXIS 117, 62 U.S.L.W. 3451 (1994).

§ 7-2102. License requirements.

(a) Except as provided in subsections (b) and (c) of this section, it shall be unlawful to operate a facility in the District, whether public or private, for profit or not for profit, without being licensed by the Mayor. Each facility shall be licensed by both its type and the level(s) of care provided.

(b) Facilities that, before August 13, 1986, were not or would not have been subject to District licensure may operate without a license until 6 months after the issuance of applicable rules under § 7-2103.

(c) The continued operation of a facility pending action by the Mayor on an application for licensure renewal or initial licensure under subsection (b) of this section shall not be deemed unlawful if a completed application was timely filed but, through no fault of the facility’s administrator or adult caregiver(s), the Mayor has failed to act on the application before the expiration of the facility’s current license or, under subsection (b) of this section, its authorized period of operation. A facility operating under this subsection shall comply with all other provisions of this chapter and rules issued pursuant to this chapter.

(d) Application forms shall include copies of all certificates of approval, authority, occupancy, or need that are required as a precondition to lawful operation in the District.

(e) A license shall be valid only for the person(s), address, type of facility, and level(s) of care stated on the license.

(f) A licensee shall, whenever possible, give the Mayor at least 60 days advance written notice before transferring ownership of a facility, including, in

the case of a corporate licensee, any transfer of the legal or beneficial ownership of 10% or more of the stock of the corporation. Upon notification, the Mayor may conduct an investigation or require reinspection to ensure that the facility will remain in compliance with this chapter, the rules issued pursuant to this chapter, and all other applicable laws.

(g) Unless sooner terminated or renewed, a license required by this chapter shall expire 1 year from the date it was issued or last renewed.

(h) A facility shall promptly honor all requests by District government officials, residents, and members of the public to inspect its license.

(i) Any license issued pursuant to this section shall be issued as a Public Health: Child Health and Welfare endorsement to a basic business license under the basic business license system as set forth in subchapter I-A of Chapter 28 of Title 47.

(Aug. 13, 1986, D.C. Law 6-139, § 3, 33 DCR 3804; Apr. 20, 1999, D.C. Law 12-261, § 2003(g), 46 DCR 3142; Oct. 28, 2003, D.C. Law 15-38, § 3(h), 50 DCR 6913.)

Prior Codifications. — 1981 Ed., § 3-802.

Effect of amendments. — D.C. Law 15-38, in subsec. (i), substituted “Public Health: Child Health and Welfare endorsement to a basic business license under the basic” for “Class A Public Health: Child Health and Welfare endorsement to a master business license under the master”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 3(h) of Streamlining Regulation Emergency Act of 2003 (D.C. Act 15-145, August 11, 2003, 50 DCR 6896).

Legislative history of Law 6-139. — For legislative history of D.C. Law 6-139, see Historical and Statutory Notes following § 7-2101.

Legislative history of Law 12-261. — Law 12-261, the “Second Omnibus Regulatory Reform Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-845, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615 and transmitted to both Houses of Congress for its review. D.C. Law 12-261 became effective on April 20, 1999.

Legislative history of Law 15-38. — For Law 15-38, see notes following § 7-732.

CASE NOTES

In general.

Children in foster care under supervision of District of Columbia Department of Human Services (DHS) had liberty interest in reasonably safe placements in which they would not be harmed; this right was not limited to safety from physical harm, and extended to safety from psychological and emotional harm. D.C. Code 1981, §§ 3-802(a), 6-2102(b), 6-2107, 6-2123; U.S. Const. Amend. 5; 42 U.S.C. § 1983. *LaShawn A. v. Dixon*, 762 F. Supp. 959, 1991 U.S. Dist. LEXIS 5300 (1991), affirmed in part and remanded in part by 990 F.2d 1319, 301 U.S. App. D.C. 49, 1993 U.S. App. LEXIS 7889 (1993).

Foster parent, whose foster children were removed from her home for abuse and neglect, was not entitled to hearing to challenge agency’s refusal to place other children in her home; foster parent’s home, which was in Maryland, was never licensed by a District of Columbia agency, so as to render District of Columbia’s licensing procedures for youth residential facilities applicable, and any constitutional right as foster parent was limited to opportunity to challenge removal of particular children. D.C. Code 1981, §§ 3-802(a), 3-808(a)(1), 16-2320(g). *Minnis v. District of Columbia Dep’t of Human Servs.*, 712 A.2d 1030, 1998 D.C. App. LEXIS 118 (1998).

§ 7-2103. Rules.

(a) The Mayor shall, no later than 12 months after August 13, 1986, and pursuant to subchapter I of Chapter 5 of Title 2, issue all rules necessary to

carry out the purposes of this chapter. These rules may categorize and define the various types of facilities, may establish licensure fees, and shall at a minimum include:

(1) Procedures governing the issuance, renewal, conversion, suspension, and revocation of licenses, the orderly transfer and discharge of residents, the receipt and investigation of complaints or allegations of abuse, the issuance of variances, and appeals from licensure-related decisions;

(2) A statement of residents' rights and responsibilities for each type of facility;

(3) Standards for continuing care, emergency care, therapeutic care, and aftercare; and

(4) Standards for each type of facility, including (when applicable), but not necessarily limited to:

(A) Programmatic standards with respect to educational, rehabilitative, and mental health services, recreational activities, parental and family involvement, the use of discipline and restraint, and the prevention of abuse;

(B) Personnel and staffing standards with respect to the ratio of staff to residents, caregiver qualifications, and ongoing staff and volunteer training;

(C) Personal care standards with respect to resident nutrition, hygiene, and emergency and routine health care;

(D) Confidentiality and privacy standards with respect to a resident's person, property, living quarters, case records, and subsection to searches for contraband;

(E) Safety and sanitation standards with respect to all parts of the facility and grounds, fire protection and prevention, first aid, and the facility's electrical, heating, cooling, ventilation, and water systems;

(F) Environmental, structural, and architectural standards; and

(G) Administrative standards with respect to resident admissions and discharges, operating procedures, fiscal management, complaint investigation and review, quality assurance, recordkeeping, and reporting.

(b) The standards adopted under subsection (a)(4)(A) of this section shall reflect a strong presumption that parental and family contact is in a resident's best interest and that active parental and family involvement is essential to a resident's care.

(c) The Mayor shall ensure that, no later than 6 months after the issuance of rules under subsection (a) of this section, all facilities shall be licensed in accordance with those rules.

(d) No later than 30 days after August 13, 1986, the Mayor shall appoint an advisory task force composed of social service, mental health, and education professionals, child welfare advocates, facility providers, community representatives, and representatives from relevant District government agencies. Within a time frame established by the Mayor, this task force shall formulate and present to the Mayor detailed, proposed standards for the rules required by subsection (a)(2) through (4) of this section. The Mayor shall give substantial weight to the task force's recommendations and shall, on a regular basis before publication of proposed rules, maintain a formal, structured dialogue with task force representatives while reviewing and acting on those recommendations.

(e)(1) The Mayor may, upon a showing of extreme hardship and manifest public need and if not inconsistent with other provisions of this chapter or deleterious to resident health, safety, or welfare, grant variances to private facilities with respect to the standards established under subsection (a)(3) and (4) of this section. The Mayor shall maintain a public record listing all variances granted under this subsection and containing a complete written explanation of the basis for each variance.

(2) The Mayor shall not issue variances to facilities owned or operated by the District government.

(Aug. 13, 1986, D.C. Law 6-139, § 4, 33 DCR 3804.)

Prior Codifications. — 1981 Ed., § 3-803. legislative history of D.C. Law 6-139, see Historical and Statutory Notes following § 7-2101.
Legislative history of Law 6-139. — For

§ 7-2104. Governing boards and advisory committees.

(a) Each facility except a foster home shall have a governing board or local advisory committee that includes 1 or more representatives of the neighborhood where the facility is located. If a licensee operates more than 1 facility in the District, a single governing board or advisory committee may serve all of the licensee's facilities so long as it includes at least 1 representative of each neighborhood in which the licensee operates a facility.

(b) The governing board or advisory committee shall:

(1) Meet with the facility administrator at the facility at least quarterly to review programs, policies, citizen complaints, and police contacts;

(2) Inform the Mayor in writing of any situation that a majority of the board or committee believes warrants correction and that the facility has failed to correct within a reasonable period of time after being notified by the board or committee; and

(3) Report annually to the Mayor on the number of admissions, the number, outcome, and length of stay of planned and unplanned discharges, staff turnover rate and efforts to reduce it, and program effectiveness in meeting the needs of residents.

(Aug. 13, 1986, D.C. Law 6-139, § 5, 33 DCR 3804.)

Prior Codifications. — 1981 Ed., § 3-804. legislative history of D.C. Law 6-139, see Historical and Statutory Notes following § 7-2101.
Legislative history of Law 6-139. — For

§ 7-2105. Inspections.

(a)(1) To ensure that each new facility will be in compliance with this chapter, the rules issued pursuant to this chapter, and all other applicable laws, the Mayor shall conduct an on-site inspection before a facility's initial licensure. Instead of issuing a full-year license to a new facility or licensee, the Mayor may issue a provisional license under § 7-2107(b) pending satisfactory completion of additional, follow-up inspections. After initial licensure, the Mayor shall conduct at least 1 on-site inspection before each licensure renewal.

(2) The Mayor shall at least once a year inspect all facilities caring for

District children outside the District to ensure that each of these facilities is in substantial compliance with this chapter, the rules issued pursuant to this chapter, and all other applicable laws. One year after the issuance of rules under § 7-2103, the Mayor shall report to the Council on the cost and efficacy of implementing this paragraph and on the extent to which facilities caring for District children outside the District are required by their respective jurisdictions to meet licensure standards comparable to those adopted under § 7-2103. Within 45 days after receiving the Mayor's report, the Council shall determine whether this paragraph should be amended to authorize the Mayor to accept licensure by other jurisdictions in lieu of conducting annual inspections.

(b) The Mayor may at any reasonable hour enter a facility for the purpose of conducting an announced or unannounced inspection to check for compliance with this chapter, a rule issued pursuant to this chapter, or any other District or locally enforceable federal law. When conducting an inspection, especially of a foster home, the Mayor shall respect the homelike atmosphere of the facility and the reasonable privacy interests of its residents and adult caregivers.

(c) Any District government employee who, while visiting a facility for the purpose of casework or monitoring, observes a condition that he or she believes in violation of this chapter, a rule issued pursuant to this chapter, or any other District or federal law shall, no later than 7 days after making the observation and if not previously reported, report this suspected violation to the Department of Consumer and Regulatory Affairs ("DCRA").

(d) The Mayor shall make all licensure and inspection reports available to the public upon request and shall notify all child-placing agencies in the District whenever a facility's license is suspended, revoked, converted to a provisional or restricted license, or not renewed.

(Aug. 13, 1986, D.C. Law 6-139, § 6, 33 DCR 3804.)

Prior Codifications. — 1981 Ed., § 3-805. legislative history of D.C. Law 6-139, see Historical and Statutory Notes following § 7-2101.
Legislative history of Law 6-139. — For

§ 7-2106. Monitoring of residents placed outside District or in therapeutic care.

(a)(1) The Mayor and the Board of Education shall ensure that every resident receiving therapeutic care has an up-to-date, individualized treatment plan ("ITP") composed of coordinated therapeutic, educational, and residential components. Each ITP shall be jointly formulated and approved by the Department of Human Services ("DHS") and the District of Columbia Public Schools ("DCPS") no later than 30 days after a child is determined to be in need of therapeutic care. As required by 20 U.S.C. § 1401 et seq., a resident with a disability receiving therapeutic care and in need of special education shall also have a current individualized education program ("IEP").

(2) DHS and DCPS shall update each resident's ITP no less than once a year. Copies of each resident's current ITP and, if applicable, IEP shall be on file with both DHS and DCPS.

(b)(1) The Mayor and the Board of Education shall establish a youth

residential monitoring committee (“monitoring committee”) that includes at a minimum representatives from DHS and DCPS. Each facility providing therapeutic care to a District child, whether located inside or outside the District, shall submit to the monitoring committee quarterly reports on that child’s progress in meeting his or her treatment and educational goals. With the exception of foster homes, each facility providing emergency or continuing care to a District child outside the District shall submit to the monitoring committee quarterly reports on that child’s physical, emotional, and educational development.

(2) Quarterly reports submitted under paragraph (1) of this subsection shall be on forms jointly developed by DHS and DCPS and shall be made available at all judicial and administrative reviews of a child’s placement.

(c) The monitoring committee shall meet at least 4 times a year with the caseworker of each District child placed outside the District or in therapeutic care to review that child’s quarterly reports and, if the child is expected to be discharged in the near future, to determine whether an aftercare plan has been prepared pursuant to subsection (f) of this section. If the committee finds that a child’s current placement is inadequate, that a child’s ITP or IEP needs revision, or that a required aftercare plan is lacking, it shall within 15 days report its findings and recommendations to the Director of DHS and the Superintendent of Schools. DHS and DCPS shall adopt or reject these recommendations within 15 days after their receipt.

(d)(1) The monitoring committee shall at least once a year conduct an on-site assessment of each District child placed outside the District or in therapeutic care to determine:

(A) The adequacy of the child’s placement or the extent of the facility’s compliance with the child’s ITP or IEP;

(B) Whether the child’s ITP, IEP, or level of care needs revision;

(C) Whether the child can receive equivalent care closer to home or in a less restrictive placement; and

(D) Whether appropriate aftercare preparations have been made if the child is due to be discharged within 30 days.

(2) Within 15 days after conducting an on-site assessment, the monitoring committee shall file a written report of its findings and recommendations with the Director of DHS and the Superintendent of Schools. If while conducting an assessment the committee observes 1 or more conditions that it believes are in violation of this chapter, a rule issued pursuant to this chapter, or any other District or federal law, it shall report these suspected violations to DCRA pursuant to § 7-2105(c).

(3) If the monitoring committee determines that a facility is not adequately meeting a child’s needs or is not in compliance with a child’s ITP or IEP, or if DCRA determines that a facility located outside the District is not in substantial compliance with District licensure standards, that facility shall be promptly notified of the necessary corrective actions. If the committee or DCRA is not satisfied that appropriate actions are being taken, it shall recommend to the Director of DHS and the Superintendent of Schools that the child be transferred to an appropriate alternative placement.

(e) The caseworker of each District child placed outside the District or in therapeutic care shall visit that child at least once a year. In meeting this requirement, the caseworker may accompany the monitoring committee when it conducts its on-site assessment under subsection (d) of this section.

(f)(1) The Mayor and the Board of Education shall ensure that, before a District child placed outside the District or in therapeutic care is brought home, he or she has a comprehensive aftercare plan composed of in-home supportive services and, if necessary, transitional living arrangements. Each child's aftercare plan shall be jointly formulated and approved by DHS and DCPS no later than 30 days before the child leaves a facility.

(2) The monitoring committee shall meet personally with each child's aftercare worker at least twice in the 6 months following a child's release into aftercare to review the continued adequacy of, and the extent of compliance with, the child's aftercare plan. If the committee finds that a child's aftercare plan needs revision or is not being carried out, it shall within 15 days report its findings and recommendations to the Director of DHS and the Superintendent of Schools. DHS and DCPS shall adopt or reject these recommendations within 15 days after their receipt.

(g) The Mayor and the Board of Education shall report annually to the Council on:

(1) The total number of residents in therapeutic care, the total number of residents located outside the District, the facilities in which they are placed, the annual cost of these facilities, and the number of residents who have ITPs, IEPs, or aftercare plans;

(2) The number of new residents in therapeutic care, the number of new residents placed outside the District, and the number, outcome, and length of stay of planned and unplanned discharges;

(3) A summary of individual facility effectiveness in meeting the needs of residents in therapeutic care; and

(4) A list of those facilities located outside the District that have been found not to be in substantial compliance with District licensure standards.

(h) Once rules have been issued under subsection (i) of this section, no District child shall reside in a facility located outside the District for more than 60 days if that facility has never been visited by the monitoring committee, the child's caseworker, or representatives from DCRA.

(i) No later than 12 months after August 13, 1986, the Mayor and the Board of Education shall each issue rules, pursuant to subchapter I of Chapter 5 of Title 2, and consistent with 20 U.S.C. § 1401 et seq., to carry out the purposes of this section.

(Aug. 13, 1986, D.C. Law 6-139, § 7, 33 DCR 3804; Apr. 24, 2007, D.C. Law 16-305, § 28(b), 53 DCR 6198.)

Prior Codifications. — 1981 Ed., § 3-806.
Effect of amendments. — D.C. Law 16-

305, in subsec. (a)(1), substituted "resident with a disability" for "handicapped resident".

Legislative history of Law 6-139. — For legislative history of D.C. Law 6-139, see Historical and Statutory Notes following § 7-2101.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 7-531.01.

§ 7-2107. Provisional and restricted licensure.

(a) As an alternative to denial, nonrenewal, suspension, or revocation of a license, whenever a facility has numerous deficiencies or a serious single deficiency with respect to the standards established under § 7-2103(a)(2) through (4), the Mayor may:

(1) Issue a provisional license if the facility is taking appropriate corrective actions in accordance with a mutually agreed-upon timetable; or

(2) Issue a restricted license that prohibits the facility from accepting new residents or providing certain specified services that it would otherwise be authorized to provide, if appropriate corrective actions are not forthcoming.

(b) As provided in § 7-2105(a), provisional licenses may be issued to new facilities or licensees in order to afford the Mayor sufficient time and evidence to evaluate whether a new facility or licensee is capable of complying with this chapter, the rules issued pursuant to this chapter, and other applicable laws.

(c) Provisional licenses may be granted for a period not to exceed 90 days and may be renewed no more than once.

(Aug. 13, 1986, D.C. Law 6-139, § 8, 33 DCR 3804.)

Prior Codifications. — 1981 Ed., § 3-807.
Legislative history of Law 6-139. — For

legislative history of D.C. Law 6-139, see Historical and Statutory Notes following § 7-2101.

§ 7-2108. Enforcement and penalties.

(a)(1) The Mayor may, before holding a hearing, suspend the license of a facility or convert its license to a provisional or restricted license if he or she determines that existing deficiencies constitute an immediate or serious and continuing danger to the health, safety, or welfare of its residents. The Mayor shall immediately give the facility written notice of the suspension or conversion, including a statement of the grounds for the action and notification that the facility has 7 days (excluding Saturdays, Sundays, and legal holidays) from the day notice is received to request an expedited, preliminary review hearing. If the facility fails to communicate, either orally or in writing, a timely request for a preliminary review hearing, the order of suspension or conversion shall remain in effect until terminated by the Mayor or an unexpedited hearing is held pursuant to procedures adopted under § 7-2103(a)(1).

(2) Within 3 days (excluding Saturdays, Sundays, and legal holidays) after receiving a timely request for a preliminary review hearing, the Mayor shall hold a hearing to review the reasonableness of the suspension or conversion order. At this hearing, the Mayor shall have the burden of establishing a prima facie case of immediate or serious and continuing endangerment. The suspension or conversion order shall be either affirmed or vacated at the hearing.

(3) In the event an order is affirmed, it shall, unless extended, remain in effect for no longer than 30 days, during which time a final hearing shall be

scheduled to consider the appropriateness of revocation or continuing restrictions on licensure. Before expiration of a suspension or conversion order, an extension may be granted for a period not to exceed an additional 30 days upon agreement of all the parties or for good cause shown.

(b)(1) Civil fines, penalties, and related costs may be imposed against a public or private facility for the violation of any provision of this chapter or rule issued pursuant to this chapter. Whether or not criminally prosecutable, a violation shall be considered an “infraction” under the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985. Except as provided in paragraphs (2) and (3) of this subsection, the procedures for adjudication and enforcement and the applicable fines, penalties, and costs shall be those established by or pursuant to Chapter 18 of Title 2. Governmental immunity shall not be a defense to any civil fine, penalty, or cost imposed.

(2) Civil fines, penalties, and related costs imposed against a facility shall not come out of funds needed to provide quality care and services to residents. To monitor compliance with this paragraph, the Mayor shall conduct an audit at least annually of every facility against which civil fines, penalties, or costs have been imposed. Civil fines, penalties, and costs imposed against any facility owned or operated by the District government shall be paid into a special account to be used for the personal needs of residents.

(3) Notwithstanding the availability of other means of enforcement, the Mayor may directly deduct the amount of civil fines, penalties, and related costs imposed against a facility from amounts otherwise payable by the District to the licensee or administrator of that facility.

(c) Notwithstanding the availability of any other remedy, the Corporation Counsel, a resident, or any person acting on or in behalf of a resident may maintain an action in court to enjoin a facility from violating the terms of its license, any provision of this chapter, or any rule issued pursuant to this chapter.

(d)(1) Notwithstanding the availability of any other remedy, a resident, any person acting on or in behalf of a resident, or the licensee or administrator of a facility may bring an action in court for mandamus to order the Mayor, a District government agency, or the youth residential monitoring committee to comply with this chapter, a rule issued pursuant to this chapter, or any other District law relevant to the operation of the facility or the care of its residents.

(2) Any person bringing an action under paragraph (1) of this subsection shall give the named defendant(s) at least 5 days advance notice (excluding Saturdays, Sundays, and legal holidays) before the action is filed in court.

(e) Any District government employee required to make a report under § 7-2105(c) who willfully fails to do so shall be subject to disciplinary and other remedial action in accordance with District law.

(f) Any person who willfully discloses, receives, uses, or permits the use of confidential information about a resident in violation of the standards established pursuant to § 7-2103(a)(4)(D) shall be guilty of a misdemeanor and, upon conviction, subject to a fine not exceeding \$5,000.

(g) Any person who willfully operates an unlicensed facility in violation of this chapter, and any licensee who willfully operates a facility in violation of

the terms of its license or who willfully impedes a District government employee in the performance of his or her authorized duties under this chapter or a rule issued pursuant to this chapter, shall be guilty of a misdemeanor and, upon conviction, subject to a fine not exceeding \$1,000 per day of violation, imprisonment for not more than 90 days, or both.

(h) Criminal prosecutions brought under subsection (f) or (g) of this section shall be in the Superior Court of the District of Columbia by information signed by the Corporation Counsel.

(Aug. 13, 1986, D.C. Law 6-139, § 9, 33 DCR 3804.)

Prior Codifications. — 1981 Ed., § 3-808.

Legislative history of Law 6-139. — For legislative history of D.C. Law 6-139, see Historical and Statutory Notes following § 7-2101.

References in text. — The “Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985,” referred to in subsection (b)(1), is D.C. Law 6-42.

CASE NOTES

ANALYSIS

Rights of foster parent.
Statutory rights of action.

Rights of foster parent.

Foster parent, whose foster children were removed from her home for abuse and neglect, was not entitled to hearing to challenge agency's refusal to place other children in her home; foster parent's home, which was in Maryland, was never licensed by a District of Columbia agency, so as to render District of Columbia's licensing procedures for youth residential facilities applicable, and any constitutional right as foster parent was limited to opportunity to challenge removal of particular children. D.C. Code 1981, §§ 3-802(a), 3-808(a)(1), 16-2320(g). *Minnis v. District of Columbia Dep't of Human*

Servs., 712 A.2d 1030, 1998 D.C. App. LEXIS 118 (1998).

Statutory rights of action.

District of Columbia's Youth Residential Facilities Licensure Act permits children in foster care to sue District officials to enforce not only requirements of Act itself, but also all of the provisions of Prevention of Child Abuse and Neglect Act related to “the care” of foster children. D.C. Code 1981, §§ 2-1351 to 2-1357, 3-801 to 3-808, 6-2101 to 6-2107, 6-2121 to 6-2127, 16-2351 to 16-2365. *LaShawn A. by Moore v. Kelly*, 990 F.2d 1319, 1993 U.S. App. LEXIS 7889 (C.A.D.C. 1993), writ of certiorari denied by 510 U.S. 1044, 114 S. Ct. 691, 126 L. Ed. 2d 659, 1994 U.S. LEXIS 117, 62 U.S.L.W. 3451 (1994).

CHAPTER 21A. VICTIMS OF SEXUAL ASSAULT EMERGENCY CARE.

Sec.
 7-2121. Definitions.
 7-2122. Information about emergency care.
 7-2123. Access to emergency care for victims of sexual assault.

Sec.
 7-2124. Personnel training.
 7-2125. Compliance.

§ 7-2121. Definitions.

For the purposes of this chapter, the term:

(1) “Emergency contraception” means a drug or drug regimen approved by the U.S. Food and Drug Administration to prevent pregnancy when administered after sexual contact, including oral contraceptive pills.

(2) “Hospital” means a facility that provides 24-hour inpatient care, including diagnostic, therapeutic, and other health-related services, for a variety of physical or mental conditions, and may, in addition, provide outpatient services, particularly emergency care.

(Mar. 25, 2009, D.C. Law 17-346, § 2, 56 DCR 966.)

Legislative history of Law 17-346. — Law 17-346, the “Emergency Care for Sexual Assault Act of 2008”, was introduced in Council and assigned Bill No. 17-323 which was referred to the Committee on Health. The Bill was adopted on first and second readings on

December 2, 2008, and December 16, 2008, respectively. Signed by the Mayor on January 12, 2009, it was assigned Act No. 17-664 and transmitted to both Houses of Congress for its review. D.C. Law 17-346 became effective on March 25, 2009.

§ 7-2122. Information about emergency care.

(a) The Department of Health, in collaboration with the Board of Medicine and the Board of Pharmacy, shall develop medically and factually accurate written information regarding prophylactic antibiotics for the treatment of sexually transmitted diseases and emergency contraception for the prevention of pregnancy due to sexual assault.

(b) The Department of Health shall disseminate the written information produced pursuant to subsection (a) of this section to all hospitals in the District.

(Mar. 25, 2009, D.C. Law 17-346, § 3, 56 DCR 966.)

Legislative history of Law 17-346. — For Law 17-346, see notes following § 7-2121.

§ 7-2123. Access to emergency care for victims of sexual assault.

All hospitals that provide emergency care to victims of sexual assault shall:

(1) Provide each victim of sexual assault written information developed pursuant to § 7-2122;

(2) Provide each victim of sexual assault an oral explanation of the written information distributed pursuant to paragraph (1) of this section;

(3) Orally inform each victim of sexual assault in a language he or she

understands of the option to be provided by the hospital prophylactic antibiotics for the treatment of sexually transmitted diseases and emergency contraception for the prevention of pregnancy; and

(4) Consistent with accepted medical practice and protocols, immediately provide prophylactic antibiotics for the treatment of sexually transmitted diseases and emergency contraception for the prevention of pregnancy to each victim of sexual assault, if the victim requests it and if the requested treatment is not medically contraindicated.

(Mar. 25, 2009, D.C. Law 17-346, § 4, 56 DCR 966.)

Legislative history of Law 17-346. — For Law 17-346, see notes following § 7-2121.

§ 7-2124. Personnel training.

Hospitals shall have written policies and procedures to ensure that all personnel who provide care or information to a victim of sexual assault:

(1) Are trained to provide medically and factually accurate and objective information about prophylactic antibiotics for the treatment of sexually transmitted diseases and emergency contraception for the prevention of pregnancy to a victim of sexual assault;

(2) Actually provide that information to a victim of sexual assault; and

(3) Ensure immediate access to prophylactic antibiotics for the treatment of sexually transmitted diseases and emergency contraception for the prevention of pregnancy to each victim of sexual assault, if requested and such treatment is not medically contraindicated.

(Mar. 25, 2009, D.C. Law 17-346, § 5, 56 DCR 966.)

Legislative history of Law 17-346. — For Law 17-346, see notes following § 7-2121.

§ 7-2125. Compliance.

The Department of Health shall determine compliance with the requirements of this chapter. The failure to comply with the requirements of this chapter may result in a civil fine to be determined by the Mayor.

(Mar. 25, 2009, D.C. Law 17-346, § 6, 56 DCR 966.)

Legislative history of Law 17-346. — For Law 17-346, see notes following § 7-2121.

SUBTITLE J. PUBLIC SAFETY.

CHAPTER 22. HOMELAND SECURITY.

Subchapter I. Homeland Security Program

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PART A.

HOMELAND SECURITY AND EMERGENCY MANAGEMENT AGENCY.

§ 7-2201. Declaration of intent; “civil defense” defined.

Because of the existing possibility of the occurrence of disaster of unprecedented destructiveness resulting from enemy attack, sabotage, or other hostile action, it is the intent of Congress that plans and programs to provide necessary protection, relief, and assistance for persons and property in the District of Columbia in the event such disaster shall occur or become imminent so as to require such protection, relief, and assistance, should be developed. As used in this chapter, the term “civil defense” shall mean all activities necessary for the development and execution of such plans and programs, unless the context indicates a different meaning.

(Aug. 11, 1950, 64 Stat. 438, ch. 686, § 1.)

Prior Codifications. — 1981 Ed., § 6-1401. 1973 Ed., § 6-1201.

§ 7-2202. Homeland Security and Emergency Management Agency; Director and other personnel; compensation.

(a) To carry out the purposes of this chapter, the Mayor of the District of Columbia is authorized to establish in the municipal government of such District a Homeland Security and Emergency Management Agency to consist of a Director and such other personnel as may be needed. Such Director shall be the executive head of such Office.

(b) Notwithstanding the limitation of any law, there may be employed in such Homeland Security and Emergency Management Agency any person who has been retired from any of the uniformed services of the United States or any office or position in the federal or District governments, and except as hereinafter provided, while so employed in such Homeland Security and Emergency Management Agency any such retired person may receive the compensation authorized for such employment or the retirement compensation or annuity, whichever he may elect, and upon the termination of such employment, he shall be restored to the same status as a retired officer or employee with the same retirement compensation or annuity to which he was entitled before having been employed in such Homeland Security and Emergency Management Agency. While any person who has been retired from any of the uniformed services of the United States is so employed in such Homeland Security and Emergency Management Agency, he may receive the compensation authorized for such employment and his retired or retirement pay, subject to § 5532 [repealed] of Title 5, United States Code.

(Aug. 11, 1950, 64 Stat. 438, ch. 686, § 2; Aug. 19, 1964, 87 Stat. 489, Pub. L. 88-448, title IV, § 401(b); Mar. 14, 2007, D.C. Law 16-262, § 101(b), 54 DCR 794.)

Prior Codifications. — 1981 Ed., § 6-1402.
1973 Ed., § 6-1202.

Effect of amendments. — D.C. Law 16-262, in subsecs. (a) and (b), substituted “Homeland Security and Emergency Management Agency” for “Office of Emergency Preparedness”.

Legislative history of Law 16-262. — Law 16-262, the “Homeland Security, Risk Reduction, and Preparedness Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-242, which was referred to Committee on Judiciary. The Bill was adopted on first and second readings on December 5, 2006, and December 19, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-618 and transmitted to both Houses of Congress for its review. D.C. Law 16-262 became effective on March 14, 2007.

References in text. — Pursuant to Mayor’s Order 98-198 (46 DCR 240) pub. January 8, 1999, the name of the Office of Emergency Preparedness has been changed to the D.C. Emergency Management Agency.

Editor’s notes. — Office of Civil Defense abolished: The Office of Civil Defense was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 45 of the Board of Commissioners, dated June 26, 1953, and as amended October 22, 1953, established under the Board of Commissioners, a Citizens’ Civil Defense Advisory Council to advise and consult with the Board and the Director of Civil Defense on matters of basic civil defense policies. The Order describes the purposes and functions of the new Council, and abolished the previous Civil Defense Advisory Council. Reorganization Order No. 49, as amended November 10, 1953, established under the supervision and control of a Commissioner, an Office of Civil Defense headed by a Director. The Order set forth the purpose, organization, and functions of the new Office of Civil Defense. The previous Office of Civil Defense was abolished and its functions and positions together with all personnel, property, records, and unexpended

funds relating to those functions and positions were transferred to the new Office of Civil Defense. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Reorganization Order No. 49 was rescinded by Commissioner's Order No. 71-259, dated July 26, 1971, which established a new Office of Civil Defense. Organization Order No. 51 of the Commissioner of the District of Columbia, dated December 27, 1974, established in the Executive Office of the Commissioner, a new Office of Civil Defense, headed by a Director, and prescribed the purposes and functions thereof. The Order replaced and rescinded Commissioner's Order No. 71-259, dated July 26, 1971, as amended by Commissioner's Order No. 73-156, July 5, 1973. The name of the Office of Civil Defense was changed to the Office of Emergency Preparedness by Mayor's Order No. 76-49, dated January 23, 1976.

Change in Government. — This section

originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Government Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor and the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 7-2203. Appointment of member of Police Department or Fire Department to position in Office of Emergency Preparedness.

The Mayor of the District of Columbia is authorized to appoint a member of the Metropolitan Police Department or a member of the Fire Department of the District of Columbia to any position in the Homeland Security and Emergency Management Agency, with the salary provided by law for such position, chargeable to the appropriation for the newly established office or agency; provided, that during the tenure of his appointment such member so appointed shall be deemed to be a member of such Metropolitan Police Department or such Fire Department, as the case may be, for all purposes of rank, seniority, allowances, privileges and benefits, including retirement and disability benefits under the provisions of § 5-701 to § 5-724, to the same extent as though the appointment had not been made, and at the termination of such appointment he shall be entitled to resume his status within the Metropolitan Police Department or Fire Department, as the case may be, which shall include any promotion in rank to which he may have become entitled; provided further, that retirement and disability benefits and salary deductions shall be based on the salary of the rank or position held in the Metropolitan Police Department or the Fire Department, as the case may be, prior to his appointment to such position in the Homeland Security and Emergency Management Agency or the salary of the position or rank he would have attained in the Metropolitan Police Department or the Fire Department had his appointment to such position in the Homeland Security and Emergency Management Agency not been made, whichever is greater.

(May 21, 1951, 65 Stat. 44, ch. 102; July 6, 1953, 67 Stat. 139, ch. 179, § 1; Mar. 14, 2007, D.C. Law 16-262, § 407, 54 DCR 794.)

Section references. — This section is referred to in § 7-2204.

Prior Codifications. — 1981 Ed., § 6-1403. 1973 Ed., § 6-1202a.

Effect of amendments. — D.C. Law 16-262 rewrote this section, which formerly read:

“The Mayor of the District of Columbia is authorized to appoint a member of the Metropolitan Police Department or a member of the Fire Department of the District of Columbia to any position in the Office of Emergency Preparedness (authorized to be abolished by Reorganization Plan No. 5 of 1952), with the salary provided by law for such position, chargeable to the appropriation for the newly established office or agency; provided, that during the tenure of his appointment such member so appointed shall be deemed to be a member of such Metropolitan Police Department or such Fire Department, as the case may be, for all purposes of rank, seniority, allowances, privileges and benefits, including retirement and disability benefits under the provisions of § 5-701 to § 5-724, to the same extent as though the appointment had not been made, and at the termination of such appointment he shall be entitled to resume his status within the Metropolitan Police Department or Fire Department, as the case may be, which shall include any promotion in rank to which he may have become entitled; provided further, that retirement and disability benefits and salary deductions shall be based on the salary of the rank or position held in the Metropolitan Police Department or the Fire Department, as the case may be, prior to his appointment to such position in such office or agency succeeding to the functions of the Office of Emergency Prepared-

ness or the salary of the position or rank he would have attained in the Metropolitan Police Department or the Fire Department had his appointment to such position in such office or agency not been made, whichever is greater.”

Legislative history of Law 16-262. — For Law 16-262, see notes following § 7-2202.

References in text. — Pursuant to Mayor’s Order 98-198 (46 DCR 240) pub. January 8, 1999, the name of the Office of Emergency Preparedness has been changed to the D.C. Emergency Management Agency.

Editor’s notes. — Office of Civil Defense abolished: See Historical and Statutory Notes following § 7-2202.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia SelfGovernment and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 7-2204. “Metropolitan Police Department”, “Fire Department” defined.

As used in § 7-2203, the terms “Metropolitan Police Department” and “Fire Department” shall include, respectively, offices or agencies succeeding to the functions of such departments pursuant to Reorganization Plan No. 5 of 1952.

(July 6, 1953, 67 Stat. 140, ch. 179, § 1.)

Prior Codifications. — 1981 Ed., § 6-1404. 1973 Ed., § 6-1202b.

§ 7-2205. Powers and duties.

The Homeland Security and Emergency Management Agency is authorized and directed, subject to the direction and control of the Mayor of the District:

(1) To prepare a comprehensive plan and program for civil defense, such plan and program to be integrated into and coordinated with the civil defense plans of the federal government, and of nearby states and appropriate political subdivisions thereof;

(2) To institute training programs and public information programs; to organize, equip, and train civil defense units, and to utilize regularly employed personnel of the government of the District of Columbia for service in and within such civil defense units and to train such personnel for such service; to expand existing agencies of the District government concerned with civil defense; and to take all other preparatory steps including the partial or full mobilization of civil defense organizations in advance of actual disaster;

(3) To make such studies and surveys of the resources and capabilities of the District for civil defense, and to plan for the most efficient emergency use thereof;

(4) To develop and enter into mutual aid agreements with states or political subdivisions thereof for reciprocal civil defense aid and mutual assistance in case of disaster too great to be dealt with unassisted. Such agreements may include the exchange of food, clothing, medicines, and other supplies; emergency housing; engineering services; police services; medical and nursing services; firefighting, rescue, transportation, and construction services and equipment; personnel necessary to provide or conduct these services; and such other supplies, equipment, facilities, personnel, and services as may be needed. Such agreements shall be consistent with the national civil defense plan and program. In time of emergency it shall be the duty of each agency and organization to render assistance in accordance with the provisions of such mutual aid agreements;

(5) To employ such technical, clerical, stenographic, and other personnel and make such expenditures within appropriations thereof or from other funds made available for purposes of civil defense, as may be necessary to carry out the purposes of this chapter;

(6) To cooperate with governmental and nongovernmental agencies, organizations, associations, and other entities, and coordinate the activities of all organizations for civil defense within the District;

(7) To accept from the United States or from any officer or agency thereof all facilities, supplies, and funds that may from time to time be offered to the District of Columbia, and to agree to such terms, conditions, rules, and regulations as may be imposed in connection with such offer;

(8) To utilize the services, equipment, supplies, and facilities of existing departments, offices, and agencies of the District to the maximum extent practicable, and the officers and personnel of all such departments, offices, and agencies are directed to cooperate with and extend such services and supply such equipment, supplies, and facilities to the said Director upon request, and, when authorized by the Mayor, appropriations available to the District of Columbia may be used to match financial contributions made by any department or agency of the United States to the government of the District for the purchase of civil defense equipment and supplies;

(9) To perform such other functions as may be assigned by the Mayor of the District of Columbia.

(Aug. 11, 1950, 64 Stat. 439, ch. 686, § 3; Apr. 5, 1952, 66 Stat. 44, ch. 159, § 1; Oct. 26, 1973, Pub. L. 93-140, § 17, 87 Stat. 507; June 28, 1977, D.C. Law 2-12,

§ 6(c), 24 DCR 1442; Mar. 3, 1979, D.C. Law 2-139, § 3205(tt), 25 DCR 5740; Mar. 14, 2007, D.C. Law 16-262, § 101(c), 54 DCR 794.)

Section references. — This section is referred to in § 1-636.02.

Prior Codifications. — 1981 Ed., § 6-1405. 1973 Ed., § 6-1203.

Effect of amendments. — D.C. Law 16-262, in the introductory paragraph, substituted “Homeland Security and Emergency Management Agency” for “Office of Emergency Preparedness”.

Legislative history of Law 2-12. — Law 2-12, the “Volunteers Services Act of 1977,” was introduced in Council and assigned Bill No. 2-87, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on March 22, 1977 and April 5, 1977, respectively. Signed by the Mayor on April 26, 1977, it was assigned Act No. 2-33 and transmitted to both Houses of Congress for its review.

Legislative history of Law 2-139. — Law 2-139, the “District of Columbia Government Comprehensive Merit Personnel Act of 1978,” was introduced in Council and assigned Bill No. 2-10, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on October 17, 1978 and October 31, 1978, respectively. Signed by the Mayor on November 22, 1978, it was assigned Act No. 2-300 and transmitted to both Houses of Congress for its review.

Legislative history of Law 16-262. — For Law 16-262, see notes following § 7-2202.

References in text. — Pursuant to Mayor’s Order 98-198 (46 DCR 240) pub. January 8, 1999, the name of the Office of Emergency Preparedness has been changed to the D.C. Emergency Management Agency.

Editor’s notes. — Office of Civil Defense abolished: See Historical and Statutory Notes following § 7-2202.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 7-2206. Limitation of liability.

Neither the District of Columbia nor any volunteer agency in the service of said District nor, except in cases of willful misconduct or gross negligence, any officer, agent, or employee of the District of Columbia or volunteer agency, or any regularly appointed volunteer worker, engaged in civil defense activities, while complying with or attempting to comply with any provision of this chapter or of any rule, regulation, or order issued pursuant to this chapter, shall be liable to any person, whether or not such person is engaged in civil defense, for death, injury, or property damage resulting therefrom. The provisions of this section shall not affect the right of any person to receive benefits to which he would otherwise be entitled under any workmen’s compensation law, or under any pension, retirement, or disability law, nor the right of any such person to receive any benefits or compensation under any other act of Congress.

(Aug. 11, 1950, 64 Stat. 440, ch. 686, § 4.)

Prior Codifications. — 1981 Ed., § 6-1406. 1973 Ed., § 6-1204.

§ 7-2207. Appropriations authorized.

Appropriations for carrying out the purposes of this chapter are hereby authorized.

(Aug. 11, 1950, 64 Stat. 440, ch. 686, § 5.)

Prior Codifications. — 1981 Ed., § 6-1407. 1973 Ed., § 6-1205.

§ 7-2208. Annual report.

The Homeland Security and Emergency Management Agency, through the Mayor of the District of Columbia, shall submit to the Senate and House of Representatives on the 1st day of each regular session of the Congress a report of its activities and expenditures under this chapter.

(Aug. 11, 1950, 64 Stat. 440, ch. 686, § 6; Mar. 14, 2007, D.C. Law 16-262, § 101(d), 54 DCR 794.)

Prior Codifications. — 1981 Ed., § 6-1408. 1973 Ed., § 6-1206.

Effect of amendments. — D.C. Law 16-262, substituted “Homeland Security and Emergency Management Agency” for “Office of Emergency Preparedness”.

Legislative history of Law 16-262. — For Law 16-262, see notes following § 7-2202.

References in text. — Pursuant to Mayor’s Order 98-198 (46 DCR 240) pub. January 8, 1999, the name of the Office of Emergency Preparedness has been changed to the D.C. Emergency Management Agency.

Editor’s notes. — Office of Civil Defense abolished: See Historical and Statutory Notes following § 7-2202.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts

Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

§ 7-2209. Interstate civil defense compacts.

(a) The Mayor of the District of Columbia is authorized to enter into and execute on behalf of the District of Columbia interstate civil defense compacts with the states, substantially in the form set forth in this subsection. The form of compact set forth in this subsection may include, in lieu of the 2nd sentence of Article 3 thereof, the following: “Each party state shall extend to the civil defense forces of any other party state, while operating within its state limits under the terms and conditions of this compact, the same powers (except that of arrest unless specifically authorized by the receiving state), duties, rights, privileges, and immunities as are extended to the civil defense forces of such state.”

FORM OF INTERSTATE COMPACT

The contracting States solemnly agree:

Article 1. The purpose of this compact is to provide mutual aid among the States in meeting any emergency or disaster from enemy attack or other cause (natural or otherwise) including sabotage and subversive acts and direct attacks by bombs, shellfire, and atomic, radiological, chemical, bacteriological means, and other weapons. The prompt, full, and effective utilization of the resources of the respective States, including such resources as may be available from the United States Government or any other source, are essential to the safety, care, and welfare of the people thereof in the event of enemy action or other emergency, and any other resources, including personnel, equipment, or supplies, shall be incorporated into a plan or plans of mutual aid to be developed among the civil-defense agencies or similar bodies of the States that are parties hereto. The Directors of Civil Defense of all party States shall constitute a committee to formulate plans and take all necessary steps for the implementation of this compact.

Article 2. It shall be the duty of each party State to formulate civil-defense plans and programs for application within such State. There shall be frequent consultation between the representatives of the States and with the United States Government and the free exchange of information and plans, including inventories of any material and equipment available for civil defense. In carrying out such civil-defense plans and programs the party States shall so far as possible provide and follow uniform standards, practices, and rules and regulations including —

(a) Insignia, arm bands, and any other distinctive articles to designate and distinguish the different civil-defense services;

(b) Blackouts and practice blackouts, air-raid drills, mobilization of civil-defense forces, and other tests and exercises;

(c) Warnings and signals for drills or attacks and the mechanical devices to be used in connection therewith;

(d) The effective screening or extinguishing of all lights and lighting devices and appliances;

(e) Shutting off water mains, gas mains, electric power connections, and the suspension of all other utility services;

(f) All materials or equipment used or to be used for civil-defense purposes in order to assure that such materials and equipment will be easily and freely interchangeable when used in or by any other party State;

(g) The conduct of civilians and the movement and cessation of movement of pedestrians and vehicular traffic, prior, during, and subsequent to drills or attacks;

(h) The safety of public meetings or gatherings; and

(i) Mobile support units.

Article 3. Any party State requested to render mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms hereof; provided, that it is understood that the State rendering aid may withhold resources to the extent necessary to provide reasonable protection for such State. Each party State shall extend to the civil-defense forces of any other party State, while operating within its State limits under the terms and conditions of this compact, the

same powers (except that of arrest unless specifically authorized by the receiving State), duties, rights, privileges, and immunities as if they were performing their duties in the State in which normally employed or rendering services. Civil-defense forces will continue under the command and control of their regular leaders but the organizational units will come under the operational control of the civil-defense authorities of the State receiving assistance.

Article 4. Whenever any person holds a license, certificate, or other permit issued by any State evidencing the meeting of qualifications for professional, mechanical, or other skills, such person may render aid involving such skill in any party State to meet an emergency or disaster and such State shall give due recognition to such license, certificate, or other permit as if issued in the State in which aid is rendered.

Article 5. No party State or its officers or employees rendering aid in another State pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged, or on account of the maintenance or use of any equipment or supplies in connection therewith.

Article 6. Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more States may differ from that appropriate among other States party hereto, this instrument contains elements of a broad base common to all States, and nothing herein contained shall preclude any State from entering into supplementary agreements with another State or States. Such supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons, and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation, and communications personnel, equipment, and supplies.

Article 7. Each party State shall provide for the payment of compensation and death benefits to injured members of the civil-defense forces of that State and the representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within such State.

Article 8. Any party State rendering aid in another State pursuant to this compact shall be reimbursed by the party State receiving such aid for any loss or damage to, or expense incurred in the operation of, any equipment answering a request for aid and for the cost incurred in connection with such requests; provided, that any aiding party State may assume in whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate such services to the receiving party State without charge or cost; and provided further, that any two or more party States may enter into supplementary agreements establishing a different allocation of costs as among those States. The United States Government may relieve the party State receiving aid from any liability and reimburse the party State supplying civil-defense forces for the compensation paid to and the transportation, subsistence, and maintenance expenses of such forces during the time of the rendition of such

aid or assistance outside the State and may also pay fair and reasonable compensation for the use or utilization of the supplies, materials, equipment, or facilities so utilized or consumed.

Article 9. Plans for the orderly evacuation and reception of the civilian population as the result of an emergency or disaster shall be worked out from time to time between representatives of the party States and the various local civil-defense areas thereof. Such plans shall include the manner of transporting such evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends, and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. Such plans shall provide that the party State receiving evacuees shall be reimbursed generally for the out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food, clothing, medicines, and medical care and like items. Such expenditures shall be reimbursed by the party State of which the evacuees are residents, or by the United States Government, under plans approved by it. After the termination of the emergency or disaster the party State of which the evacuees are resident shall assume the responsibility for the ultimate support or repatriation of such evacuees.

Article 10. This compact shall be available to any State, territory, or possession of the United States, and the District of Columbia. The term "State" may also include any neighboring foreign country or province or state thereof.

Article 11. The committee established pursuant to Article 1 of this compact may request the Civil Defense Agency of the United States Government to act as an informational and coordinating body under this compact, and representatives of such agency of the United States Government may attend meetings of such committee.

Article 12. This compact shall become operative immediately upon its ratification by any State as between it and any other State or States so ratifying and shall be subject to approval by Congress unless prior Congressional approval has been given. Duly authenticated copies of this compact and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party States and with the Civil Defense Agency and other appropriate agencies of the United States Government.

Article 13. This compact shall continue in force and remain binding on each party State until the legislature or the Governor of such party State takes action to withdraw therefrom. Such action shall not be effective until 30 days after notice thereof has been sent by the Governor of the party State desiring to withdraw to the Governors of all other party States.

Article 14. This compact shall be construed to effectuate the purposes stated in Article 1 hereof. If any provision of this compact is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of this compact and the applicability thereof to other persons and circumstances shall not be affected thereby.

(b) Notwithstanding the provisions of the Federal Civil Defense Act of 1950 (50 U.S.C. App., § 2251 et seq. [repealed]), the consent of Congress is hereby granted to each compact entered into by the District of Columbia with any state pursuant to the provisions of this section.

(c) Whenever any such compact becomes operative by ratification of the parties thereto, such compact shall have the force and effect of law.

(d) As used in this section the word “state” includes the territories and possessions of the United States and the District of Columbia and with respect to the District of Columbia the word “Governor” means the Mayor of the District of Columbia.

(Apr. 22, 1954, 68 Stat. 62, ch. 172, §§ 1-4.)

Prior Codifications. — 1981 Ed., § 6-1409.
1973 Ed., § 6-1207.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to

§ 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

Complementary Legislation: Ala.—Code 1975, § 31-9-7. Ariz.—A.R.S. § 26-309 note. Ark.—A.C.A. §§ 12-76-101, 12-76-102. Cal.—West’s Ann.Cal.Gov.Code, §§ 177 to 178.5. Del.—20 Del.C. §§ 3301, 3302. D.C.—D.C. Official Code, 2001 Ed. § 7-2209. Kan.—K.S.A. 48-3201, 48-3202. La.—LSA-R.S. 29:721 to 29:738. Maine—37-B M.R.S.A. §§ 901 to 915. Md.—Code, Public Safety, §§ 14-601 to 14-605. Mich.—M.C.L.A. § 30.261. Neb.—R.R.S. 1943, § A1-109. Nev.—N.R.S. 415.010. N.J.—N.J.S.A. 38A:20-3. N.Y.—McKinney’s Unconsol.Laws, §§ 9231 to 9233. Pa.—35 Pa.C.S.A. § 7111. R.I.—Gen.Laws. 1956, § 30-15-14. S.C.—Code 1976, §§ 25-9-10, 25-9-20. Tenn.—T.C.A. § 58-2-402. U.S.—Jan. 12, 1951, ch. 1228, 64 Stat. 1249. Utah—U.C.A. 1953, 39-5-1 to 39-5-3. Virgin Islands—23 V.I.C. § 1128.

PART B.

HOMELAND SECURITY PROGRAM IMPLEMENTATION.

§ 7-2231.01. Findings.

The Council finds that:

(1) The District of Columbia has been designated a high-threat target city by the United States Department of Homeland Security, and needs commensurate capabilities for preventing, mitigating, and responding to terrorist attacks. These capabilities include risk-based strategic planning, threat and vulnerability analysis, and gap assessments.

(2) It is the policy of the District of Columbia to warn, inform, and protect its residents by providing timely and accurate information before, during, and after times of emergency. Such information can save lives, reduce property losses, and speed economic recovery by providing residents with the informa-

tion they need to make informed decisions and to take appropriate protective actions.

(3) The District of Columbia seeks to promote transparency regarding homeland security efforts, in order that government officials and the public can assess the risks, adequacy of programs, the progress made, and gaps remaining.

(4) Risks and vulnerabilities identified through an ongoing program of analysis should be addressed expeditiously and comprehensively.

(5) The Final Report of the National Commission on Terrorist Attacks Upon the United States outlined appropriate roles for the federal government and its counterparts at the local government level, and concluded that homeland security priorities and assistance should be based strictly on an assessment of risks and vulnerabilities.

(Aug. 11, 1950, 64 Stat. 440, ch. 686, § 201, as added Mar. 14, 2007, D.C. Law 16-262, § 101(e), 54 DCR 794.)

Legislative history of Law 16-262. — Law 16-262, the “Homeland Security, Risk Reduction, and Preparedness Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-242, which was referred to Committee on Judiciary. The Bill was adopted on first

and second readings on December 5, 2006, and December 19, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-618 and transmitted to both Houses of Congress for its review. D.C. Law 16-262 became effective on March 14, 2007.

§ 7-2231.02. Definitions.

For the purposes of this part, the term:

(1) “Agency” means the Homeland Security and Emergency Management Agency.

(2) “Director” means the Director of the Homeland Security and Emergency Management Agency.

(3) “Program” means the Homeland Security Program created by § 7-2231.03.

(Aug. 11, 1950, 64 Stat. 440, ch. 686, § 202, as added Mar. 14, 2007, D.C. Law 16-262, § 101(e), 54 DCR 794.)

Legislative history of Law 16-262. — For Law 16-262, see notes following § 7-2231.01.

§ 7-2231.03. Homeland Security Program.

(a) The Director shall develop a Homeland Security Program to identify and mitigate threats, risks, and vulnerabilities within the District of Columbia. The program shall include, but not be limited to:

(1) Identifying public infrastructure and other public assets in the District that need protection, assessing vulnerability, and addressing priority needs;

(2) Establishing measurable readiness priorities and targets that balance the potential threat and magnitude of terrorist attacks, major disasters, and

other emergencies with the resources required to prevent, respond to, and recover from them;

(3) Establishing readiness metrics and performance measures for preparedness in the areas of prevention, protection, response, and recovery;

(4) Assisting residents and public and private entities in emergency preparedness;

(5) Coordinating with federal, state, and regional authorities, and with private entities; and

(6) Developing a budget to implement the Program.

(b) Within one year of March 14, 2007, the Director shall contract for a baseline threat and vulnerability assessment of the District of Columbia to include risks associated with, but not limited to, terrorism (including bioterrorism), radiological weapons and their potential transport into the District of Columbia, food and water supply, cybersecurity, fire and rescue capability; an assessment of actions already taken to address security issues and recommendations on whether additional safety and security enforcement actions are needed; and recommendations for additional legislation needed to enhance the security of District residents.

(c) Beginning one year after the establishment of the Program, the Mayor shall submit an annual report to the Council describing the current level of the preparedness of the District of Columbia, including reports on the District's homeland security capabilities, priority unmet needs and the cost of meeting those needs, relevant training and readiness exercises, resident education, and the utilization of mutual aid.

(Aug. 11, 1950, 64 Stat. 440, ch. 686, § 203, as added Mar. 14, 2007, D.C. Law 16-262, § 101(e), 54 DCR 794.)

Legislative history of Law 16-262. — For Law 16-262, see notes following § 7-2231.01.

§ 7-2231.04. Public information and involvement program.

(a) The Mayor shall:

(1) Disseminate homeland security information to the public and engage residents in homeland security emergency planning;

(2) Solicit resident input in vulnerability assessment and planning activities; and

(3) Offer periodic training opportunities to members of the public.

(Aug. 11, 1950, 64 Stat. 440, ch. 686, § 204, as added Mar. 14, 2007, D.C. Law 16-262, § 101(e), 54 DCR 794.)

Legislative history of Law 16-262. — For Law 16-262, see notes following § 7-2231.01.

§ 7-2231.05. District of Columbia government employee security training program.

(a) The Director, in consultation with other District of Columbia agencies, law enforcement, security, and terrorism experts, and representatives of public employees, shall develop and issue guidelines for a public employee security training program to meet requirements established in the District of Columbia Emergency Response Plan.

(b) At the request of the Director, District government agencies shall submit employee training programs to the Director for annual review.

(Aug. 11, 1950, 64 Stat. 440, ch. 686, § 205, as added Mar. 14, 2007, D.C. Law 16-262, § 101(e), 54 DCR 794.)

Legislative history of Law 16-262. — For Law 16-262, see notes following § 7-2231.01.

§ 7-2231.06. Large building security.

(a) In consultation with organizations representing property owners, property managers, and building operators and managers, the Director shall develop guidance for building operators and managers to enhance the security of large commercial and residential buildings.

(b) In consultation with the Director of the Department of Consumer and Regulatory Affairs and organizations representing property owners, property managers, and building operators and managers, the Director shall occasionally review the building code to determine potential changes that could improve building security.

(Aug. 11, 1950, 64 Stat. 440, ch. 686, § 206, as added Mar. 14, 2007, D.C. Law 16-262, § 101(e), 54 DCR 794.)

Legislative history of Law 16-262. — For Law 16-262, see notes following § 7-2231.01.

§ 7-2231.07. Exercises.

The Agency shall coordinate a regular program of readiness exercises to test the District of Columbia's emergency preparedness, propose action to address any gap in preparedness, and coordinate with regional, federal, and private entities.

(Aug. 11, 1950, 64 Stat. 440, ch. 686, § 207, as added Mar. 14, 2007, D.C. Law 16-262, § 101(e), 54 DCR 794.)

Legislative history of Law 16-262. — For Law 16-262, see notes following § 7-2231.01.

§ 7-2231.08. Public notification of emergencies.

The Agency shall establish and implement an effective homeland security public warning and information capability that can be used during emergen-

cies to warn residents timely and to disseminate emergency information to residents, both indoors and outdoors, at any time and regardless of residents' special needs. The Agency shall also pay particular attention to the needs of senior citizens and low-income residents in establishing an effective homeland security public warning and information capability.

(Aug. 11, 1950, 64 Stat. 440, ch. 686, § 208, as added Mar. 14, 2007, D.C. Law 16-262, § 101(e), 54 DCR 794.)

Legislative history of Law 16-262. — For Law 16-262, see notes following § 7-2231.01.

§ 7-2231.09. Private sector vulnerability assessments and mitigation plans.

The Director shall request the voluntary sharing of information from private entities on best practices for prevention, mitigation, response, and recovery from a terrorist or other security incident, including information on relocation and other business continuity plans and programs, for the purpose of collaboration to improve public and private preparedness.

(Aug. 11, 1950, 64 Stat. 440, ch. 686, § 209, as added Mar. 14, 2007, D.C. Law 16-262, § 101(e), 54 DCR 794.)

Emergency legislation. — For temporary (90 day) addition, see § 3008 of Fiscal Year 2009 Budget Support Emergency Act of 2008 (D.C. Act 17-468, July 28, 2008, 55 DCR 8746).

Legislative history of Law 16-262. — For Law 16-262, see notes following § 7-2231.01.

§ 7-2231.10. Rules for use of surveillance cameras.

(a) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, shall issue rules for the use of surveillance cameras and technology in the operation of its Video Interoperability for Public Safety ("VIPS") program; provided, that the Agency shall not use cameras maintained or monitored by either the Department of Corrections or the Metropolitan Police Department. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, by resolution, within this 45-day review period, the proposed rules shall be deemed disapproved.

(b) Until rules are issued and approved pursuant to subsection (a) of this section, the use of any video surveillance cameras that are part of the VIPS program shall be governed by the regulations promulgated pursuant to the Use of Closed Circuit Television to Combat Crime Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-284; 54 DCR 938), and published in Chapter 25 of Title 24 of the District of Columbia Municipal Regulations.

(c) The Metropolitan Police Department shall maintain a right of access to all surveillance cameras and technology in the VIPS program, without limitation, except as stated in applicable rules or regulations governing the VIPS program.

(Aug. 11, 1950, 64 Stat. 440, ch. 686, § 210, as added Aug. 16, 2008, D.C. Law 17-219, § 3008, 55 DCR 7598; Mar. 5, 2010, D.C. Law 18-113, § 2, 57 DCR 487.)

Effect of amendments. — D.C. Law 18-113, in subsec. (a), substituted “program; provided, that the Agency shall not use cameras maintained or monitored by either the Department of Corrections or the Metropolitan Police Department.” for “program.”; and added subsec. (c).

Legislative history of Law 17-219. — For Law 17-219, see notes following § 7-651.17.

Legislative history of Law 18-113. — Law 18-113, the “Homeland Security and Emergency Management Agency Use of Video Surveillance Amendment Act of 2009”, was introduced in Council and assigned Bill No. 18-282, which was referred to the Committee on Public Safety and Judiciary. The bill was adopted on first and second readings on December 1, 2009, and December 15, 2009, respectively. Approved

without the signature of the Mayor on January 4, 2010, it was assigned Act No. 18-261 and transmitted to both Houses of Congress for its review. D.C. Law 18-113 became effective on March 5, 2010.

Short title. — Short title: Section 3007 of D.C. Law 17-219 provided that subtitle C of title III of the act may be cited as the “Homeland Security and Emergency Management Agency Video Surveillance Rules Amendment Act of 2008”.

Delegation of Authority. — Delegation of Authority Pursuant to section 3008 of D.C. Law 17-219, the Homeland Security and Emergency Management Agency Video Surveillance Rules Act of 2008, see Mayor’s Order 2008-135, October 10, 2008 (55 DCR 11216).

Subchapter II. District of Columbia Homeland Security Commission.

§ 7-2271.01. Definitions.

For the purposes of this subchapter, the term:

(1) “Agency” means the Homeland Security and Emergency Management Agency.

(2) “Commission” means the Homeland Security Commission established by § 7-2271.02.

(3) “Director” means the Director of the Homeland Security and Emergency Management Agency.

(Mar. 14, 2007, D.C. Law 16-262, § 201, 54 DCR 794.)

Legislative history of Law 16-262. — Law 16-262, the “Homeland Security, Risk Reduction, and Preparedness Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-242, which was referred to Committee on Judiciary. The Bill was adopted on first

and second readings on December 5, 2006, and December 19, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-618 and transmitted to both Houses of Congress for its review. D.C. Law 16-262 became effective on March 14, 2007.

§ 7-2271.02. Establishment of District of Columbia Homeland Security Commission; membership.

(a) There is established a District of Columbia Homeland Security Commission, which shall consist of 7 persons with expertise in security, transportation, communication, chemical safety, risk assessment, terrorism (including bioterrorism), or occupational safety and health.

(b)(1) Commission members shall be nominated by the Mayor and confirmed by the Council for terms of 3 years, in accordance with § 1-523.01(e).

(2) The Mayor shall establish through rulemaking that Commission members shall be subject to pre-nomination inquiries and security-clearance requirements.

(3) The terms of the members first appointed shall begin on the date a majority of the first members are sworn in, which shall become the anniversary date for all subsequent appointments.

(4) Commission member's terms shall be staggered so that either 4 positions or 3 positions will expire on the year's anniversary date.

(c) Members shall receive no salary for their service on the Commission but shall be reimbursed for administrative costs associated with membership.

(d) The Agency shall provide staff to the Commission.

(Mar. 14, 2007, D.C. Law 16-262, § 202, 54 DCR 794.)

Legislative history of Law 16-262. — For Law 16-262, see notes following § 7-2271.01.

§ 7-2271.03. Responsibilities.

(a) The Commission shall:

(1) Gather and evaluate information on the status of homeland security in the District of Columbia;

(2) Measure progress and gaps in homeland security preparedness;

(3) Recommend security improvement priorities in consultation with major public and private entities; and

(4) Advise the District of Columbia government on the Homeland Security Program.

(b) The Director may submit to the Commission and the Commission may request from the Director for periodic review, after-action reports on District of Columbia and other governmental homeland security exercises, assessments of regional homeland security efforts, and other documents relevant to the Commission's responsibilities.

(c) The Commission, in consultation with the Director, shall use any information collected under this subchapter to make recommendations for improvements in security and preparedness.

(Mar. 14, 2007, D.C. Law 16-262, § 203, 54 DCR 794.)

Legislative history of Law 16-262. — For Law 16-262, see notes following § 7-2271.01.

§ 7-2271.04. Confidentiality of proceedings.

(a) Commission proceedings shall be closed to the public and shall not be subject to § 1-207.42 when the Committee is discussing specific public and private vulnerability assessments or where the information discussed would:

(1) Reveal a trade secret or privileged or confidential commercial or financial information; or

(2) Be detrimental to public safety.

(b)(1) Persons other than Commission members who attend any Commis-

sion meeting which, pursuant to this section, is not open to the public, shall not disclose what occurred at the meeting to anyone who was not in attendance, except insofar as disclosure is necessary for that person to comply with a request for information from the Commission.

(2) Commission members who attend meetings not open to the public shall not disclose what occurred with anyone who was not in attendance (except other Commission members), except insofar as disclosure is necessary to carry out the duties of the Commission.

(3) Any party who discloses information pursuant to this subsection shall take all reasonable steps to ensure that the information disclosed, and the person to whom the information is disclosed, are as limited as possible.

(c) Members of the Commission, persons attending a Commission meeting, and persons who present information to the Commission may not be required to disclose, in any administrative, civil, or criminal proceeding, information presented at or opinions formed as a result of a Commission meeting.

(Mar. 14, 2007, D.C. Law 16-262, § 204, 54 DCR 794.)

Legislative history of Law 16-262. — For Law 16-262, see notes following § 7-2271.01.

§ 7-2271.05. Confidentiality of information.

(a) All information and records generated by the Commission, including statistical compilations and reports, and all information and records acquired by, and in the possession of, the Commission are confidential.

(b) Except as permitted by this section, information and records of the Commission shall not be disclosed voluntarily, pursuant to a subpoena, in response to a request for discovery in any adjudicative proceeding, or in response to a request made under subchapter II of Chapter 5 of Title 2 [§ 2-531 et seq.], nor shall it be introduced into evidence in any administrative, civil, or criminal proceeding.

(c) Commission information and records may be disclosed only as necessary to carry out the Commission's duties and purposes. The information and records may be disclosed by the Commission to another Homeland Security Commission if the other commission is governed by confidentiality provisions which afford the same or greater protections as those provided in this subchapter.

(d) Information and records presented to the Commission shall not be immune from subpoena or discovery, or prohibited from being introduced into evidence, solely because the information and records were made available to the Commission, if the information and records could have been obtained through other sources.

(Mar. 14, 2007, D.C. Law 16-262, § 205, 54 DCR 794; Mar. 25, 2009, D.C. Law 17-353, § 157(b), 56 DCR 1117.)

Effect of amendments. — D.C. Law 17-353 validated a previously made technical correction in subsec. (c).

Legislative history of Law 16-262. — For Law 16-262, see notes following § 7-2271.01.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 7-161.

§ 7-2271.06. Records.

All records and information obtained by the Commission pursuant to this subchapter shall be destroyed by the Commission one year after publication of the Commission's annual report.

(Mar. 14, 2007, D.C. Law 16-262, § 206, 54 DCR 794.)

Legislative history of Law 16-262. — For Law 16-262, see notes following § 7-2271.01.

§ 7-2271.07. Report to the Mayor, Council, and the public.

The Commission shall report on an annual basis to the Mayor and Council on the work of the Commission and areas of the Homeland Security Program in need of improvement and shall make the annual report available to the public.

(Mar. 14, 2007, D.C. Law 16-262, § 207, 54 DCR 794; Mar. 25, 2009, D.C. Law 17-353, § 157(c), 56 DCR 1117.)

Effect of amendments. — D.C. Law 17-353 validated a previously made technical correction.

Legislative history of Law 16-262. — For Law 16-262, see notes following § 7-2271.01.

Legislative history of Law 17-353. — For Law 17-353, see notes following § 7-161.

CHAPTER 23. PUBLIC EMERGENCIES.

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| Sec. 7-2301. Definitions. | Sec. 7-2305. Regulations; recommendation of legislation. |
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§ 7-2301. Definitions.

As used in this chapter the term:

(1) "Communicable disease" means that term as it is defined in § 7-132(2).

(1A) "District of Columbia response plan" means the District of Columbia's state plan for public emergency preparedness and prevention prepared pursuant to § 201 of the Disaster Relief Act of 1974 (42 U.S.C. § 5121) and § 7-2302.

(1B) "Health care provider" means any person or entity who provides health care services, including hospitals, medical clinics and officers, special care facilities, medical laboratories, physicians, pharmacists, dentists, physician assistants, nurse practitioners, registered and other nurses, paramedics, emergency medical or laboratory technicians, and ambulance and emergency medical workers.

(2) "Mayor" means the Mayor of the District of Columbia or his or her designated agent.

(3) "Public emergency" means any disaster, catastrophe, or emergency situation where the health, safety, or welfare of persons in the District of Columbia is threatened by reason of the actual or imminent consequences within the District of Columbia of:

- (A) Enemy attack, sabotage or other hostile action;
- (B) Severe and unanticipated resource shortage;
- (C) Fire;
- (D) Flood, earthquake, or other serious act of nature;
- (E) Serious civil disorder;
- (F) Any serious industrial, nuclear, or transportation accident;
- (G) Explosion, conflagration, power failure;
- (H) Injurious environmental contamination which threatens or causes

damage to life, health, or property; or

(I) Outbreak of a communicable disease that threatens or causes damage to life, health, or property.

(4) "Resource" means, but is not limited to, natural gas, heating fuel, automotive fuel, electricity, water, and food.

(Mar. 5, 1981, D.C. Law 3-149, § 2, 27 DCR 4886; Oct. 17, 2002, D.C. Law 14-194, §§ 202(a), 903(a), 49 DCR 5306.)

Prior Codifications. — 1981 Ed., § 6-1501.

Effect of amendments. — D.C. Law 14-194, in par. (1), substituted “District of Columbia response plan” for “Emergency operations plan”.

D.C. Law 14-194 redesignated par. (1) as par. (1A); added a new par. (1); in par. (1A), substituted “District of Columbia response plan” for “Emergency operations plan”; added par. (1B); made nonsubstantive changes in pars. (3)(G) and (3)(H); and added par. (3)(I).

Legislative history of Law 3-149. — Law 3-149, the “District of Columbia Public Emergency Act of 1980,” was introduced in Council and assigned Bill No. 3-198, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on September 30, 1980 and October 14, 1980, respectively. Signed by the Mayor on October 29, 1980, it was assigned Act No. 3-274

and transmitted to both Houses of Congress for its review.

Legislative history of Law 14-194. — For Law 14-194, see notes following § 7-132.

Mayor’s Orders. — Establishment of the Mayor’s Emergency Preparedness Council, see Mayor’s Order 2002-1, February 1, 2002 (49 DCR 896).

Amendment of Mayor’s Order 2002-1, dated January 2, 2002, Establishment of the Mayor’s Emergency Preparedness Council (EPC), see Mayor’s Order 2003-121, August 15, 2003 (50 DCR 7246).

Declaration of Public Emergency, see Mayor’s Order 2003-135, September 17, 2003 (50 DCR 8294).

Declaration of Termination of Public Emergency, see Mayor’s Order 2003-139, September 29, 2003 (50 DCR 9958).

§ 7-2302. Establishment of program of public emergency preparedness; publication.

(a) The Mayor may establish a program of public emergency preparedness that utilizes the services of all appropriate agencies (including the Homeland Security and Emergency Management Agency) and the program shall include, but not be limited to:

(1) Development of a District of Columbia response plan which would:

(A) Set forth a comprehensive and detailed District of Columbia state program for preparation against, and assistance following, emergencies and major disasters, including provisions for assistance to individuals, businesses, and affected designated subdivisions of the District of Columbia; and

(B) Include provisions for: Appointment and training of appropriate staffs; formulation of necessary regulations and procedures; and conduct of required exercises;

(2) Post public emergency evaluations;

(3) Periodic review of programs; and

(4) Coordination of federal and state preparedness programs.

(b) Except as provided in subsection (c) of this section, the Mayor shall publish in the District of Columbia Register, for notice and comment, any program or plan for public emergency preparedness prepared pursuant to this chapter. The publication shall, at a minimum, state the subject matter of the program or plan and the specific manner in which a complete copy can be obtained or reviewed and commented upon prior to the transmittal of the plan or program to the Council of the District of Columbia.

(c) Any specific response plan, and any specific vulnerability assessment, either of which is intended to prevent or to mitigate an act of terrorism, as that term is defined in § 22-3152(1), shall be exempt from the requirements in subsection (b) of this section.

(d) The Mayor shall review the District of Columbia response plan on an annual basis. Any revisions to the plan shall be published in the District of

Columbia Register and forwarded to the Council pursuant to subsection (b) of this section.

(e) Neither the District of Columbia, its independent agencies, employees, officers, or agents shall be held liable for damages for any actions taken within the scope of the individual's employment or voluntary service to implement the provisions of the District of Columbia response plan, except in instances of gross negligence.

(Mar. 5, 1981, D.C. Law 3-149, § 3, 27 DCR 4886; Oct. 17, 2002, D.C. Law 14-194, § 202(b), 49 DCR 5306; Mar. 13, 2004, D.C. Law 15-105, § 47(a), 51 DCR 881; Mar. 14, 2007, D.C. Law 16-262, § 408, 54 DCR 794.)

Section references. — This section is referred to in § 7-2301.

Prior Codifications. — 1981 Ed., § 6-1502.

Effect of amendments. — D.C. Law 14-194, in subsec. (a), substituted "District of Columbia Emergency Management Agency" for "Office of Emergency Preparedness"; in subsec. (a)(1), substituted "District of Columbia response plan" for "emergency operations plan"; in subsec. (b), substituted "Except as provided in subsection (c) of this section, the Mayor shall publish in" for "The Mayor shall publish in 2 consecutive editions of"; and added subsecs. (c), (d), and (e).

D.C. Law 15-105, in subsec. (a)(1), validated a previously made technical correction.

D.C. Law 16-262, in subsec. (a), in the introductory paragraph, substituted "Homeland Se-

curity and Emergency Management Agency" for "District of Columbia Emergency Management Agency".

Legislative history of Law 3-149. — For legislative history of D.C. Law 3-149, see Historical and Statutory Notes following § 7-2301.

Legislative history of Law 14-194. — For Law 14-194, see notes following § 7-132.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 7-136.

Legislative history of Law 16-262. — For Law 16-262, see notes following § 7-2202.

References in text. — Pursuant to Mayor's Order 98-198 (46 DCR 240) pub. January 8, 1999, the name of the Office of Emergency Preparedness has been changed to the D.C. Emergency Management Agency.

§ 7-2303. Transmittal of plan or program to Council.

(a) The Mayor shall transmit to the Council of the District of Columbia complete copies of any existing plan or program prepared pursuant to § 201 of the Disaster Relief Act of 1974 (42 U.S.C. § 5121) within 30 calendar days of March 5, 1981. The plan or program shall be valid only if the Council of the District of Columbia does not adopt, within 30 days (excluding Saturdays, Sundays, holidays and days on which the Council of the District of Columbia is in recess according to its rules) after the receipt of the plan or program from the Mayor, a resolution disapproving the plan or program.

(b) The Mayor shall transmit to the Council of the District of Columbia complete copies of any plan or program prepared pursuant to this section within 30 calendar days of the completion of the plan or program. The plan or program shall be valid only if the Council of the District of Columbia does not adopt, within 30 days (excluding Saturdays, Sundays and holidays and days on which the Council of the District of Columbia is in recess according to its rules) after receipt of the plan or program from the Mayor, a resolution disapproving the plan or program.

(Mar. 5, 1981, D.C. Law 3-149, § 4, 27 DCR 4886.)

Prior Codifications. — 1981 Ed., § 6-1503.

Legislative history of Law 3-149. — For

legislative history of D.C. Law 3-149, see Historical and Statutory Notes following § 7-2301.

§ 7-2304. Issuance of emergency executive order; contents; actions of Mayor after issuance.

(a) Upon reasonable apprehension of the existence of a public emergency and the determination by the Mayor that the issuance of an order is necessary for the immediate preservation of the public peace, health, safety, or welfare, and as a prerequisite to requesting emergency or major disaster assistance in accordance with the Disaster Relief Act of 1974 (42 U.S.C. § 5121) the Mayor may issue an emergency executive order which shall state:

- (1) The existence, nature, extent, and severity of the public emergency;
- (2) The measures necessary to relieve the public emergency;
- (3) The specific requirements of the order and the persons upon whom the order is binding; and
- (4) The duration of the order.

(b) Upon the issuance of an emergency executive order the Mayor may:

(1) Expend such funds appropriated to the District of Columbia government sufficient to carry out public emergency service missions and responsibilities;

(2) Implement those provisions of the District of Columbia response plan as issued by the Mayor, without regard to established operating procedures relating to the performance of public works, entering into contracts, incurring obligations, employment of temporary workers, rental of equipment, purchase of supplies and materials, and expenditure of public funds; provided, that this paragraph shall apply only to employees of the District of Columbia government;

(3) Prepare for, order, and supervise the implementation of measures designed to protect persons and property in the District of Columbia. Such measures may include the evacuation of persons in the District of Columbia to such emergency shelters within the District of Columbia as the Mayor may designate, or such shelters outside the District of Columbia as the Mayor may designate with the approval of the Governor of the state to which District of Columbia citizens are to be evacuated, and provision for the reception, sheltering, maintenance, and care of such evacuees. Evacuation of any personnel or activity of the federal government shall take place only with the consent of the President of the United States or the President's designee; provided, that upon agreement between the federal and District of Columbia governments, any prearranged evacuation plan shall constitute such consent;

(4) Require the shutting off, disconnection, or suspension of service from, or by, gas mains, electric power lines, or other public utilities;

(5) Destroy or cause to be destroyed any property, real or personal, in the District of Columbia, found to be contaminated by any matter or substance which renders it deleterious to life or health, and by reason of such contamination is of immediate or imminent danger to persons or property; to cause the removal from the District of Columbia or from place to place within the District of Columbia of any contaminated property; and to prohibit persons from contacting or approaching such property so as to endanger their lives or health;

(6) Issue orders or regulations to control, restrict, allocate, or regulate the use, sale, production and distribution of food, fuel, clothing, and other

commodities, materials, goods, services, and resources as required by the District of Columbia response plan or by any federal emergency plan;

(7) Direct any person or group of persons, in the District of Columbia, to reduce or otherwise alter the hours during which they conduct business or similar activity at premises established and maintained for a business and to direct any person or group, or class of persons, within the District of Columbia, to remain off the public streets in the event that any public emergency requires that the Mayor institute a curfew;

(8) Establish such public emergency services units as he or she may deem appropriate;

(9) Expand existing departmental and agency units within the District of Columbia government concerned with public emergency services;

(10) Exercise operational direction over all District of Columbia government departments and agencies during the period when an emergency executive order may be in effect;

(11) Procure supplies and equipment, institute training programs and public information programs and take all other preparatory steps, including the partial or full mobilization of public emergency services units in advance of actual disaster, to insure the furnishing of adequately trained and equipped personnel during a public emergency. Such programs shall be integrated and coordinated with the emergency services plans and programs of the federal government and of the neighboring states and political subdivisions thereof;

(12) Request predisaster assistance or the declaration of a major disaster from the federal government, certify the need for federal disaster assistance and commit the use of a certain amount of District of Columbia government funds to alleviate the damage, loss, hardship, and suffering resulting from the disaster;

(13) Prevent or reduce harmful consequences of disaster; or

(14) Detain for medical reasons any person for which there is probable cause to believe that the person is affected with a communicable disease and that the person's presence in the general population is likely to cause death or seriously impair the health of others pursuant to subchapter II of Chapter 1 of this title.

(Mar. 5, 1981, D.C. Law 3-149, § 5, 27 DCR 4886; Oct. 17, 2002, D.C. Law 14-194, §§ 202(c), 903(b), 49 DCR 5306; Mar. 13, 2004, D.C. Law 15-105, § 47(b), 51 DCR 881.)

Prior Codifications. — 1981 Ed., § 6-1504.

Effect of amendments. — D.C. Law 14-194, in subsecs. (b)(2) and (b)(6), substituted "District of Columbia response plan" for "emergency operations plan"; made nonsubstantive changes in subsecs. (b)(12) and (b)(13); and added subsec. (b)(14).

D.C. Law 15-105, in pars. (2) and (6) of subsec. (b), validated previously made technical corrections.

Temporary Addition of Section. — For temporary (225 day) additions, see §§ 2 to 4 of

Natural Disaster Consumer Protection Temporary Act of 1989 (D.C. Law 8-51, October 19, 1989, law notification 37 DCR 7544).

Legislative history of Law 3-149. — For legislative history of D.C. Law 3-149, see Historical and Statutory Notes following § 7-2301.

Legislative history of Law 14-194. — For Law 14-194, see notes following § 7-132.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 7-136.

Mayor's Orders. — Emergency Declaration (As a Result of Severe Rain, Wind, and Thun-

derstorms of August 10-11, 2001), see Mayor's Order 2001-126, August 13, 2001 (48 DCR 8214).

Declaration of a Public Emergency (Terrorist Acts), see Mayor's Order 2001-138, September 11, 2001 (48 DCR 9002).

Rescission of September 11, 2001 State of Public Emergency; Continued Coordination of Subordinate Agencies to Meet Potential Terrorist Threats, see Mayor's Order 2001-139, September 14, 2001 (48 DCR 9004).

Establishment of the "Mayor's Domestic Preparedness Task Force", see Mayor's Order 2001-142, September 19, 2001 (48 DCR 9009).

2011-146: Declaration of Public Emergency, see Mayor's Order 2011-146, August 26, 2011 (58 DCR 7905).

Declaration of Public Emergency, see Mayor's Order 2011-148, September 2, 2011 (58 DCR 8083).

§ 7-2304.01. Issuance of public health emergency executive order.

(a) When the Mayor declares a public emergency pursuant to § 7-2304, the Mayor may issue an additional executive order to proclaim a public health emergency if the Mayor has reasonable cause to believe that there is an imminent hazard of or actual occurrence of any of the following harms:

- (1) A large number of deaths in the District of Columbia;
- (2) A large number of serious or long-term human health disabilities in the District of Columbia;
- (3) Widespread exposure to an infectious or toxic agent that poses a significant risk of substantial future harm to a large number of people in the District of Columbia;
- (4) Use, dissemination, or detonation of a weapon of mass destruction, as defined by Chapter 31A of Title 22, in the District of Columbia; or
- (5) Other emergency events that create an acute and immediate need for volunteer health practitioners.

(b) An executive order issued pursuant to this section shall be subject to the publication requirements of § 7-2306(d).

(c) A public health emergency executive order shall specify:

- (1) The existence, nature, extent, and severity of the public health emergency;
- (2) The geographic areas subject to the declaration;
- (3) The conditions that have brought about the public health emergency, if known;
- (4) The measures necessary to relieve the public health emergency;
- (5) The specific requirements of the order and the persons upon whom the order is binding; and
- (6) The duration of the order, which shall be consistent with the provisions of § 7-2306.

(d) A public health emergency executive order may include terms that:

- (1) Require that the conduct and management of the affairs and property of licensed health care providers in the District of Columbia shall be such that they will reasonably assist and not unreasonably detract from the ability of the District of Columbia government to successfully respond to and control the public health emergency in accordance with the provisions of the District of Columbia response plan and of subchapter II of Chapter 1 of this title;
- (2) Appoint licensed health care providers, either from the District of

Columbia or from other jurisdictions, as temporary agents of the District of Columbia; provided, that such appointments are:

(A) In effect solely for the duration of the public health emergency;

(B) In effect solely for the purpose of assisting the District of Columbia in implementing the provisions of the District of Columbia response plan and of subchapter II of Chapter 1 of this title; and

(C) Without compensation;

(3) Exempt licensed health care providers, either from the District of Columbia or from other jurisdictions, from civil liability for damages for any actions taken within the scope of the provider's employment or voluntary service to implement the provisions of the District of Columbia response plan and of subchapter II of Chapter 1 of this title, except in instances of gross negligence, and solely for the duration of the public health emergency; and

(4) Waive any licensing requirements, permits, or fees otherwise required by District of Columbia law to allow health care providers from other jurisdictions appointed as temporary agents to respond to the public health emergency pursuant to this subsection; provided, that the appointed temporary agents are licensed in their home jurisdictions in their fields of expertise.

(d-1) Except as otherwise provided in an executive order issued pursuant to this section, this section shall not otherwise restrict or limit the use and deployment of volunteer health practitioners or the rights, privileges, duties, and immunities provided to volunteer health practitioners pursuant to Chapter 23C of this title [§ 7-2361.01 et seq.].

(e) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, shall issue regulations to implement the provisions of this section.

(Mar. 5, 1981, D.C. Law 3-149, § 5a, as added Oct. 17, 2002, D.C. Law 14-194, § 903(c), 49 DCR 5306; Mar. 13, 2004, D.C. Law 15-105, § 48, 51 DCR 881; July 1, 2010, D.C. Law 18-184, § 14(d), 57 DCR 3655.)

Effect of amendments. — D.C. Law 15-105, in subsec. (d)(2)(B), validated a previously made technical correction.

D.C. Law 18-184, in subsec. (a), deleted "or" from the end of par. (3); substituted "; or" for a period at the end of par. (4), and added par. (5); and added subsec. (d-1).

Legislative history of Law 14-194. — For Law 14-194, see notes following § 7-132.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 7-136.

Legislative history of Law 18-184. — Law

18-184, the "Uniform Emergency Volunteer Health Practitioners Act of 2010", was introduced in Council and assigned Bill No. 18-71, which was referred to the Committee on Health, Public Safety and the Judiciary. The Bill was adopted on first and second readings on March 2, 2010, and March 16, 2010, respectively. Signed by the Mayor on April 26, 2010, it was assigned Act No. 18-383 and transmitted to both Houses of Congress for its review. D.C. Law 18-184 became effective on July 1, 2010.

§ 7-2305. Regulations; recommendation of legislation.

In addition to disaster prevention measures included in District of Columbia government and interjurisdictional public emergency plans, to prevent or manage the harmful consequences of a disaster, and consistent with the provisions of other law, the Mayor shall, when appropriate, issue regulations or recommend legislation to the Council of the District of Columbia relating to flood plain management, stream encroachment and flow regulation, weather

modification, fire prevention and control, air quality, public works, land use, land use planning, and construction standards.

(Mar. 5, 1981, D.C. Law 3-149, § 6, 27 DCR 4886.)

Prior Codifications. — 1981 Ed., § 6-1505. legislative history of D.C. Law 3-149, see Historical and Statutory Notes following § 7-2301.
Legislative history of Law 3-149. — For

§ 7-2306. Duration of emergency executive order; extension; publication of order; regional programs and agreements.

(a) An emergency executive order, or a public health emergency executive order, issued by the Mayor shall be effective for a period of no more than 15 calendar days from the day it is signed by the Mayor, but may be rescinded in whole or in part by the Mayor within that period should the Mayor determine that the public emergency no longer exists, or no longer warrants the part rescinded.

(b) An emergency executive order, or a public health emergency executive order, may be extended for up to an additional 15-day period, only upon request by the Mayor for, and the adoption of, an emergency act by the Council of the District of Columbia.

(c) Should extenuating circumstances, such as death, destruction or other perilous conditions prohibit the convening of at least two-thirds of the members of the Council of the District of Columbia for consideration of emergency legislation, the Mayor shall make a reasonable attempt to consult with those members of the Council of the District of Columbia not affected by death, destruction, or other perilous conditions, after which the Mayor may extend the emergency executive order for up to 15 days.

(d) Upon the issuance of any emergency executive order, or a public health emergency executive order, as soon as practicable given the condition of the emergency, the order shall be published in the District of Columbia Register, in 2 daily newspapers of general circulation in the District of Columbia, and shall be posted in such public places in the District of Columbia as the Mayor determines by regulation.

(e) The Mayor may adopt and implement such rules and regulations as the Mayor finds necessary to carry out the purposes of this chapter, pursuant to the District of Columbia Administrative Procedure Act (§ 2-501 et seq.).

(f) The Mayor may join or enter into, on behalf of the District of Columbia government, regional programs, and agreements with the federal government, neighboring states, and political subdivisions thereof, for the coordination of disaster preparedness programs.

(Mar. 5, 1981, D.C. Law 3-149, § 7, 27 DCR 4886; Oct. 17, 2002, D.C. Law 14-194, § 903(d), 49 DCR 5306.)

Prior Codifications. — 1981 Ed., § 6-1506.
Effect of amendments. — D.C. Law 14-194, in subsec. (a), substituted “An emergency executive order, or a public health emergency executive order,” for “Any emergency executive order”; in subsec. (b), substituted “An emergency executive order, or a public health emergency executive order,” for “An emergency ex-

ecutive order”; and in subsec. (d), substituted “any emergency executive order, or a public health emergency executive order,” for “any emergency executive order”.

Legislative history of Law 3-149. — For

legislative history of D.C. Law 3-149, see Historical and Statutory Notes following § 7-2301.

Legislative history of Law 14-194. — For Law 14-194, see notes following § 7-132.

§ 7-2307. Violation of emergency executive order.

An emergency executive order issued by the Mayor may provide for a fine of not more than \$1,000 for each violation. The Corporation Counsel of the District of Columbia or any Assistant Corporation Counsel may bring an action in the name of the District of Columbia against anyone who has violated the provisions of an emergency executive order issued pursuant to this chapter.

(Mar. 5, 1981, D.C. Law 3-149, § 8, 27 DCR 4886.)

Prior Codifications. — 1981 Ed., § 6-1507.

Legislative history of Law 3-149. — For

legislative history of D.C. Law 3-149, see Historical and Statutory Notes following § 7-2301.

§ 7-2308. Applicability of Administrative Procedure Act to emergency executive order.

No action taken pursuant to an emergency executive order issued by the Mayor pursuant to this chapter shall be subject to § 2-509, until after the expiration date of the emergency executive order.

(Mar. 5, 1981, D.C. Law 3-149, § 9, 27 DCR 4886.)

Prior Codifications. — 1981 Ed., § 6-1508.

Temporary Amendment of Section. —

For temporary (225 day) repeal of D.C. Act 8-5, see § 7 of Temporary Curfew Temporary Act of 1989 (D.C. Law 8-13, March 15, 1989, law notification 36 DCR 4558).

Temporary Addition of Section. — For temporary (225 day) addition, see § 2 of Emergency Management Assistance Compact Temporary Act of 2002 (D.C. Law 14-140, May 21, 2002, law notification 49 DCR 5057).

Emergency legislation. — For temporary (90 day) emergency management assistance

compact, see § 2 of Emergency Management Assistance Compact Emergency Act of 2002 (D.C. Act 14-281, February 25, 2002, 49 DCR 2296).

For temporary (90 day) addition of provisions, see §§ 2 and 3 of Emergency Management Assistance Compact Congressional Review Emergency Act of 2002 (D.C. Act 14-362, May 20, 2002, 49 DCR 5061).

Legislative history of Law 3-149. — For legislative history of D.C. Law 3-149, see Historical and Statutory Notes following § 7-2301.

CHAPTER 23A. EMERGENCY MANAGEMENT ASSISTANCE COMPACT.

Sec.

7-2331. Findings.

Sec.

7-2332. Authority to execute Compact.

§ 7-2331. Findings.

(a) The terrorist attacks on September 11, 2001 in New York, Virginia, and Pennsylvania, resulting in grievous loss of life and the concomitant disruption of our national regional services, highlight the need for, and value of, intergovernmental planning and programming at the state level, including the District of Columbia.

(b) Mutual assistance between the states entering into this compact and the District of Columbia is also needed for the management of any emergency or disaster that is duly declared by the governor of a state, or the Mayor of the District of Columbia, whether arising from natural disaster, technological hazard, man-made disaster, civil emergency aspects of resources shortages, community disorders, insurgency, or enemy attack.

(c) There is also a need for mutual assistance between the states and the District of Columbia fostering cooperation in emergency-related exercises, testing, or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party states or subdivisions thereof during emergencies, such actions occurring outside actual declared emergency periods.

(d) The United States Congress issued the Emergency Management Assistance Compact (EMAC) Joint Resolution (Pub. L. No. 104-321) on October 19, 1996, authorizing states, including the District of Columbia, to join in the EMAC.

(Oct. 17, 2002, D.C. Law 14-194, § 602, 49 DCR 5306.)

Legislative history of Law 14-194. — Law 14-194, the “Omnibus Anti-Terrorism Act of 2002”, was introduced in Council and assigned Bill No. 14-373, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 9, 2002, and May 7, 2002, respectively. Signed by the Mayor on June 3, 2002, it was assigned Act No. 14-380 and transmitted to both Houses of Congress for its review. D.C. Law 14-194 became effective on October 17, 2002.

Complementary Legislation: Ala.—Code 1975, §§ 31-9-1 to 31-9-24. Alaska—AS 26.23.135, 26.23.136. Ariz.—A.R.S. §§ 26-401, 26-402. Ark.—A.C.A. §§ 12-49-401, 12-49-402. Cal.—West’s Ann.Cal.Gov.Code, §§ 179 to 179.9. Colo.—West’s C.R.S.A. §§ 24-60-2901, 24-60-2902. Conn.—C.G.S.A. § 28-23a. Del.—20 Del.C. §§ 3401 to 3403. D.C.—D.C. Official Code, 2001 Ed. §§ 7-2331, 7-2332. Fla.—West’s F.S.A. §§ 252.921 to 252.933. Ga.—O.C.G.A. §§ 38-3-80, 38-3-81. Ill.—S.H.A.

45 ILCS 151/1 to 151/99. Ind.—West’s A.I.C. 10-14-5-1 to 10-14-5-16. Iowa—I.C.A. § 29C.21. Kan.—K.S.A. 48-9a01. Ky.—KRS 39A.950. La.—LSA-R.S. 29:751. Maine—37-B M.R.S.A. §§ 921 to 933. Md.—Code, Public Safety, §§ 14-701, 14-702. Mich.—M.C.L.A. §§ 3.991 to 3.994, 3.1001 to 3.1004. Miss.—Code 1972, §§ 45-18-1, 45-18-3. Mo.—V.A.M.S. § 44.415. Neb.—R.R.S. 1943, § A1-124. Nev.—N.R.S. 415.010. N.H.—RSA 108:1 to 108:3. N.J.—N.J.S.A. 38A:20-4, 38A:20-5. N.M.—NMSA 1978, §§ 12-10-14, 12-10-15. N.Y.—McKinney’s Executive Law, § 29-g. N.C.—G.S. §§ 166A-40 to 166A-53. Okl.—63 Okl.St. Ann. §§ 684.1 to 684.13. Ore.—ORS 401.041 to 401.043. Pa.—35 Pa.C.S.A. §§ 7601 to 7604. R.I.—Gen. Laws. 1956, §§ 30-15.9-1 to 30-15.9-14. S.C.—Code 1976, §§ 25-9-410, 25-9-420. S.D.—SDCL 34-48A-53. Tenn.—T.C.A. § 58-2-403. Vt.—20 V.S.A. §§ 101 to 112. Va.—Code 1950, § 44-146.28:1. Wash.—RCWA 38.10.010 to 38.10.900. Wis.—W.S.A. 323.80. W.Va.—Code, 15-5-22.

§ 7-2332. **Authority to execute Compact.**

The Mayor is hereby authorized to execute, on behalf of the District of Columbia, the Emergency Management Assistance Compact in the form substantially as follows:

Emergency Management Assistance Compact

Article I

Purpose and Authorities

(a) This compact is made and entered into by and between the participating member states that enact this compact, hereinafter called party states. For the purposes of this compact, the term “states” is taken to mean the several states, the Commonwealth of Puerto Rico, the District of Columbia, and all U.S. territorial possessions.

(b) The purpose of this compact is to provide for mutual assistance between the states entering into this compact in managing any emergency or disaster that is duly declared by the Governor (Mayor) of the affected state(s), whether arising from natural disaster, technological hazard, man-made disaster, civil emergency aspects of resources shortages, community disorders, insurgency, or enemy attack.

(c) This compact shall also provide for mutual cooperation in emergency-related exercises, testing, or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party states or subdivision of party states during emergencies, such actions occurring outside actual declared emergency period. Mutual assistance in this compact may include the use of the states’ National Guard forces, either in accordance with the National Guard Mutual Assistance Compact or by mutual agreement between states.

Article II

General Implementation

(a) Each party state entering into this compact recognizes that many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under this compact. Each state further recognizes that there will be emergencies which require immediate access and present procedures to apply outside resources to make a prompt and effective response to such an emergency. This is because few, if any, individual states have all the resources they may need in all types of emergencies of delivering resources to areas where emergencies exist.

(b) The prompt, full, and effective utilization of resources of the participating states, including any resources on hand or available from the federal government or any other source, that are essential to the safety, care, and welfare of the people in the event of any emergency or disaster declared by a

party state, shall be the underlying principle on which all articles of this compact shall be understood.

(c) On behalf of the Governor (Mayor) of each state participating in the compact, the legally designated state official who is assigned responsibility for emergency management will be responsible for formulation of the appropriate interstate mutual aid plans and procedures necessary to implement this compact.

Article III

Party State Responsibilities

(a) It shall be the responsibility of each party state to formulate procedural plans and programs for interstate cooperation in the performance of the responsibilities listed in this article. In formulating such plans, and in carrying them out, the party states, insofar as practical, shall:

(1) Review individual state hazards analyses and, to the extent reasonably possible, determine all those potential emergencies the party states might jointly suffer, whether due to natural disaster, technological hazard, man-made disaster, emergency aspects of resources shortages, civil disorders, insurgency, or enemy attack.

(2) Review party states' individual emergency plans and develop a plan that will determine the mechanism for the interstate management and provision of assistance concerning any potential emergency.

(3) Develop interstate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans.

(4) Assist in warning communities adjacent to or crossing the state boundaries.

(5) Protect and assure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment, services, and resources, both human and material.

(6) Inventory and set procedures for the interstate loan and deliver [*sic*] of human and material resources, together with procedures for reimbursement or forgiveness.

(7) Provide, to the extent authorized by law, for temporary suspension of any statutes or ordinances that restrict the implementation of the above responsibilities.

(b) The authorized representative of a party state may request assistance of another party state by contacting the authorized representative of that state. The provisions of this compact shall apply only to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If verbal, the request shall be confirmed in writing within 30 days of the verbal request. Requests shall provide the following information:

(1) A description of the emergency service function for which assistance is needed, including, but not limited to, fire services, law enforcement, emergency medical, transportation, communications, public works and engi-

neering, building inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue.

(2) The amount and type of personnel, equipment, materials and supplies needed, and a reasonable estimate of the length of time they will be needed.

(3) The specific place and time for staging of the assisting party's response and a point of contact at that location.

(c) There shall be frequent consultation between state officials who have assigned emergency management responsibilities and other appropriate representatives of the party states with affected jurisdictions and the United States Government, with free exchange of information, plans, and resource records relating to emergency capabilities.

Article IV

Limitations

(a) Any party state requested to render mutual aid or conduct exercises and training for mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms hereof; provided, that it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for such state.

(b) Each party state shall afford to the emergency forces of any party state, while operating within its state limits under the terms and conditions of this compact, the same powers, except that of arrest unless specifically authorized by the receiving state, duties, rights, and privileges as are afforded forces of the state in which they are performing emergency services. Emergency forces will continue under the command and control of their regular leaders, but the organizational units will come under the operational control of the emergency services authorities of the state receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state of emergency or disaster by the Governor of the party state, or the Mayor of the District of Columbia, that is to receive assistance or upon commencement of exercises or training for mutual aid and shall continue so long as the exercises or training for mutual aid are in progress, the state of emergency or disaster remains in effect, or loaned resources remain in the receiving state(s), whichever is longer.

Article V

Licenses and Permits

Whenever any person holds a license, certificate, or other permit issued by any state party to the compact evidencing the meeting of qualifications for professional, mechanical, or other skills, and when such assistance is requested by the receiving party state, such person shall be deemed licensed, certified, or permitted by the state requesting assistance to render aid involving such skill to meet a declared emergency or disaster, subject to such

limitations and conditions as the Governor of the requesting state, or Mayor of the District of Columbia, may prescribe by executive order or otherwise.

Article VI

Liability

Officers or employees of a party state rendering aid in another state pursuant to this compact shall be considered agents of the requesting state for tort liability and immunity purposes. No party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.

Article VII

Supplementary Agreements

Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that among the states that are party hereto, this compact contains elements of a broad base common to all states, and nothing herein contained shall preclude any state from entering into supplementary agreements with another state or affect any other agreements already in force between states. Supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies.

Article VIII

Compensation

Each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own state.

Article IX

Reimbursement

Any party state rendering aid in another state pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to or expense incurred in the operation of any equipment and the provisions of any service in answering a request for aid and for the costs incurred in connection with such requests; provided, that any aiding party

state may assume in whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate such services to the receiving party state without charge or cost; and provided further, that any two or more party states may enter into supplementary agreements establishing a different allocation of costs among those states. Article VII expenses shall not be reimbursable under this article.

Article X

Evacuation

Plans for the orderly evacuation and interstate reception of portions of the civilian population as the result of any emergency or disaster of sufficient proportions to so warrant, shall be worked out and maintained between the party states and the emergency management/services directors of the various jurisdictions where any type of incident requiring evacuations might occur. Such plans shall be put into effect by request of the state from which evacuees come and shall include the manner of transporting such evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of evacuees, the providing of facilities for the notification of relatives or friends, and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. Such plans shall provide that the party state receiving evacuees and the party state from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food, clothing, medicines and medical care, and the like items. Such expenditures shall be reimbursed as agreed by the party state from which the evacuees come. After the termination of the emergency or disaster, the party state from which the evacuees come shall assume the responsibility for the ultimate support of repatriation of such evacuees.

Article XI

Implementation

(a) This compact shall become effective with respect to the District of Columbia immediately upon its enactment into law.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but such withdrawal shall not take effect until 30 days after the Governor of the withdrawing state, or the Mayor of the District of Columbia, has given notice in writing of such withdrawal to the Governors of all other party states (or to the Mayor of the District of Columbia). Such action shall not relieve the withdrawing state from obligations assumed hereunder prior to the effective date of withdrawal.

(c) Duly authenticated copies of this compact and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each party state and with the Federal Emergency Management Agency and other appropriate agencies of the United States Government.

Article XII

Validity

This compact shall be construed to effectuate the purposes stated in Article I hereof. If any provisions of this compact is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of this compact and the applicability thereof to other persons and circumstances shall not be affected thereby.

Article XIII

Additional Provisions

Nothing in this compact shall authorize or permit the use of military force by the National Guard of a state at any place outside that state in any emergency for which the President is authorized by law to call into federal service the militia, of [*sic*] for any purpose for which the use of the Army or the Air Force would in the absence of express statutory authorization be prohibited under § 1385 of Title 18 of the United States Code.

Article XIV

District of Columbia Provisions

(a) Absent congressional authority to the contrary, with respect to the District of Columbia, no provision of this contract shall supercede the requirements of 31 U.S.C. § 1341(a)(1)(A) or of D.C. Official Code § 1-204.46.

(b) The District of Columbia may purchase liability insurance to ensure against debts and obligations that may be incurred as a result of its participation in any mutual aid agreement authorized by, and entered into, pursuant to this compact.

(Oct. 17, 2002, D.C. Law 14-194, § 603, 49 DCR 5306; Mar. 13, 2004, D.C. Law 15-105, § 49, 51 DCR 881.)

Effect of amendments. — D.C. Law 15-105, in subsec. (b) of Article XIV, validated a previously made technical correction.

Legislative history of Law 14-194. — For Law 14-194, see notes following § 7-2331.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 7-136.

CHAPTER 23B. EMERGENCY MEDICAL SERVICES.

| Sec. | Sec. |
|--|---|
| 7-2341.01. Definitions. | services personnel certified in other jurisdictions. |
| 7-2341.02. Applicability and exemptions. | 7-2341.13. Powers and duties of the Mayor. |
| 7-2341.03. Emergency medical services agencies: license required. | 7-2341.14. License and certification renewal. |
| 7-2341.04. Emergency medical response vehicles: license or certification required. | 7-2341.15. Denial, suspension, and revocation of license or certification. |
| 7-2341.05. Emergency medical services personnel: certification required. | 7-2341.16. Summary suspension. |
| 7-2341.06. Flight emergency medical services personnel: certification required. | 7-2341.17. Hearings. |
| 7-2341.07. Emergency medical services training facilities: certification required. | 7-2341.18. Judicial review. |
| 7-2341.08. Emergency medical services instructors: certification required. | 7-2341.19. Trauma care system. |
| 7-2341.09. Liability insurance required for vehicles, facilities, and agencies. | 7-2341.20. Advertising. |
| 7-2341.10. Provisional and restricted licenses and certifications. | 7-2341.21. Emergency medical services for children. |
| 7-2341.11. Licenses and certifications issued pursuant to prior authority. | 7-2341.22. Establishment of District of Columbia Emergency Medical Services Advisory Committee. |
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| | 7-2341.24. Criminal and civil penalties. |
| | 7-2341.25. Prosecutions. |
| | 7-2341.26. Injunctions. |
| | 7-2341.27. Repeal of existing regulations. |
| | 7-2341.28. Pending actions and proceedings; existing orders. |
| | 7-2341.29. Applicability. |

§ 7-2341.01. Definitions.

For the purposes of this chapter, the term:

(1) “Ambulance” means any privately or publicly owned vehicle specially designed, constructed, modified, or equipped for use as a means for transporting patients in a medical emergency or any privately or publicly owned vehicle that is advertised, marked, or in any way held out as a vehicle for the transportation of patients in a medical emergency. The term “ambulance” includes vehicles capable of operation over ground, on water, and in air.

(2) “Competency evaluation” means any written, oral, or practical examination or assessment of the knowledge or skills of an applicant for certification or re-certification as emergency medical services personnel which is pertinent to the ability of that applicant to perform the duties required of him or her. Each competency evaluation may include one or more sub-parts, including individual demonstrations and assessments of the applicant’s performance in actual or simulated emergency situations.

(3) “Emergency” means the existence of circumstances in which the element of time in treating, or in transporting to medical treatment, a person who is ill, injured, wounded, or otherwise incapacitated is essential to the health or life of that person, and in which rescue operations, or competent first aid, or both may be essential to the health or life of that person.

(4) “Emergency medical response vehicle” means a vehicle or conveyance used to respond to the scene of a medical emergency for the purpose of rendering medical assistance, including the provision of medical assistance on the scene or the transportation of patients to a health care facility or other treatment facility. The term “emergency medical response vehicle” includes:

(A) Ambulances which operate as motor vehicles, watercraft, or aircraft; and

(B) Fire engines, motor vehicles, segways, or other ground, water, or air vehicles used to transport emergency medical services personnel, supplies, or equipment to the scene of an emergency.

(5) “Emergency medical services agency” means an entity engaged in the business or service of one or more of the following:

(A) Responding to requests for emergency medical assistance;

(B) Transporting patients from the scene of an emergency to a health care facility or other treatment facility; or

(C) Providing medical assistance to patients on the scene of an emergency or in transit from the scene of an emergency to a health care facility or other treatment facility.

(6) “Emergency medical services instructor” means a person engaged in the business or service of:

(A) Teaching one or more courses of study or training designed to prepare interested persons for the oral, written, or practical examinations required for certification or re-certification as emergency medical services personnel;

(B) Administering one or more such examinations; or

(C) Both.

(7) “Emergency medical services personnel” means a person performing the duties of providing medical assistance, medical treatment, first aid, or lifesaving interventions, on the scene of an emergency or in transit from the scene of an emergency to a health care facility or other treatment facility, to a person who is ill, injured, wounded, or otherwise incapacitated. The term “emergency medical services personnel” includes persons otherwise classified as “certified first responders”, “emergency medical technicians”, “basic, intermediate, or advanced emergency medical technicians”, and “paramedics”.

(8) “Emergency medical services training facility” means an institution or entity engaged in the business or service of providing one or more courses of study or training designed to prepare interested persons for the oral, written, or practical examinations required for certification or re-certification as emergency medical services personnel.

(9) “Flight emergency medical services personnel” means a person performing the duties of providing medical assistance, medical treatment, first aid, or lifesaving interventions, in airborne transit from the scene of an emergency to a health care facility or other treatment facility, or in airborne transit between facilities, to a person who is ill, injured, wounded, or otherwise incapacitated. The term “flight emergency medical services personnel” includes persons otherwise classified as emergency medical services personnel by this chapter, as well as nurses, respiratory therapists, physician assistants, and physicians.

(10) “Health care facility” means a hospital, maternity center, ambulatory surgical facility, or hospice, as defined in subchapter I of Chapter 5 of Title 44 [§ 44-501 et seq.].

(11) “Medical control system” means a system wherein the direct clinical

instructions given to emergency medical services personnel in the field are given by physicians in a designated hospital or medical resource center.

(12) “Mutual aid” means an agreement whereby the District of Columbia requests the assistance of an outside entity to provide supplemental or specialized emergency medical services in an emergent situation, pursuant to established protocols.

(13) “Qualified health care professional” means a person licensed and qualified in accordance with Chapter 12 of Title 3 [§ 3-1201.01 et seq.] and with rules promulgated pursuant to that chapter, to engage in the act of prescribing and of rendering medical care and advice under the circumstances presented.

(14) “Treatment facility” means an urgent care center, treatment center, clinic, or other facility or office at which medical or psychological services are performed, and which has been designated by the Mayor as a facility authorized to receive patients transported by emergency medical services entities or personnel.

(Mar. 25, 2009, D.C. Law 17-357, § 2, 56 DCR 1167.)

Legislative history of Law 17-357. — Law 17-357, the “Emergency Medical Services Act of 2008”, was introduced in Council and assigned Bill No. 17-596 which was referred to the Committee on Public Safety and Judiciary. The Bill was adopted on first and second readings on December 2, 2008, and December 16, 2008, respectively. Signed by the Mayor on January 16, 2009, it was assigned Act No. 17-691 and

transmitted to both Houses of Congress for its review. D.C. Law 17-357 became effective on March 25, 2009.

Delegation of Authority. — Delegation of Authority pursuant to D.C. Law 17-357, the “Emergency Medical Services Act of 2008”, see Mayor’s Order 2009-89, June 1, 2009 (56 DCR 6831).

§ 7-2341.02. Applicability and exemptions.

(a) Except as otherwise provided in this chapter, this chapter shall apply to every:

(1) Person performing the duties of emergency services personnel, compensated or uncompensated, within the District of Columbia;

(2) Entity providing emergency medical services within the District of Columbia, public or private, for-profit or not-for-profit, including owners or operators of emergency medical services agencies and owners or operators of emergency medical response vehicles; and

(3) Person and entity providing emergency medical services training and instruction, public or private, for-profit or not-for-profit, within the District of Columbia.

(b) The provisions of this chapter shall not apply to the following:

(1) The unexpected rendering of immediate care by a private citizen, or the unexpected use of a privately owned vehicle which is not ordinarily used in the business of transporting persons who are sick, injured, wounded, or otherwise incapacitated or helpless, in the performance of a lifesaving act;

(2) Agencies, vehicles, or training facilities owned or operated by the United States government and operating on federal property;

(3) Agencies operating within the District of Columbia pursuant to mutual aid agreements;

(4) Validly licensed or certified emergency medical response vehicles based outside the District which do not otherwise constitute public vehicles for hire; and

(5) Validly licensed vehicles operated solely for the transportation of non-emergency patients to and from treatment facilities as outpatients; provided, that this exemption shall not apply to any vehicle which is in any way held out as an emergency medical response vehicle.

(c) The Mayor shall establish rules to ensure that emergency medical response vehicles and emergency medical services personnel based outside of the District, but receiving patients within the District for transport to a location within the District, shall meet the substantive standards of this chapter and of rules promulgated pursuant to this chapter.

(Mar. 25, 2009, D.C. Law 17-357, § 3, 56 DCR 1167.)

Legislative history of Law 17-357. — For Law 17-357, see notes following § 7-2341.01.

§ 7-2341.03. Emergency medical services agencies: license required.

(a) Except as otherwise provided in this chapter, no person or entity shall operate an emergency medical services agency in the District, whether public or private, for-profit or not-for-profit, without first having obtained a license from the Mayor to do so.

(b) Unless otherwise specified, all provisions of this chapter, including those contained within this section, shall apply to any entity of the District government engaging or seeking to engage in the operation of an emergency medical services agency in the District, except that such entity shall be required to obtain a certification from the Mayor in lieu of a license.

(c) An applicant for a license to operate an emergency medical services agency shall establish to the satisfaction of the Mayor that the agency meets all requirements set forth in this chapter and in rules promulgated pursuant to this chapter.

(d) An applicant for a license shall:

(1) Submit an application to the Mayor on a form approved by the Mayor;

(2) Submit supporting documentation as required by the Mayor, including all certificates of approval, authority, occupancy, or need that are required as a precondition to lawful operation in the District of Columbia; and

(3) Pay the applicable fee established by the Mayor through rulemaking, except that no license fee shall be required of any emergency medical services agency operated by the District government.

(e) A license to operate an emergency medical services agency shall be issued for a period of time not to exceed 2 years.

(f) A license to operate an emergency medical services agency shall be valid only for the persons and premises named as applicants in the application. Any change in the ownership of an agency owned by an individual, partnership, or association, or in the legal or beneficial ownership of 25% or more of the stock of a corporation that owns or operates an agency, shall require re-licensure.

(g) An emergency medical services agency shall have a medical director. Except as provided in § 5-401, 5-402, 5-404, 5-404.01, and 5-407, an emergency medical services agency shall have as its medical director a physician licensed to practice medicine in the District of Columbia. The medical director shall have responsibility for medical oversight of all operations of the agency.

(h) Each person performing the duties of emergency medical services personnel while employed by or otherwise affiliated with an emergency medical services agency shall practice under the licensure authority of the agency's medical director as granted pursuant to Chapter 12 of Title 3 [§ 3-1201.01 et seq.] except when directed by another physician or other qualified health care professional as part of the District of Columbia's established medical control system.

(Mar. 25, 2009, D.C. Law 17-357, § 4, 56 DCR 1167.)

Legislative history of Law 17-357. — For Law 17-357, see notes following § 7-2341.01.

§ 7-2341.04. Emergency medical response vehicles: license or certification required.

(a) Except as otherwise provided in this chapter, no ambulance or other emergency medical response vehicle intended to transport patients may be operated in the District without a currently valid license having been issued by the Mayor for that vehicle and for its use as an emergency medical response vehicle.

(b) Except as otherwise provided in this chapter, no vehicle or other conveyance may be operated as an emergency medical response vehicle not intended to transport patients in the District without a currently valid certification having been issued by the Mayor for the emergency medical response equipment and supplies contained therein.

(c) An applicant for a license or certification to operate an emergency medical response vehicle shall establish to the satisfaction of the Mayor that the vehicle, including its emergency medical response equipment and supplies, meets all applicable requirements set forth in this chapter and in rules promulgated pursuant to this chapter.

(d) An applicant for a license or certification shall:

- (1) Submit an application to the Mayor on a form approved by the Mayor;
- (2) Submit supporting documentation as required by the Mayor, including all certificates of approval, authority, motor vehicle registration, or need that are required as a precondition to lawful operation in the District of Columbia; and

- (3) Pay the applicable fee established by the Mayor through rulemaking, except that no license or certification fee shall be required for any emergency medical response vehicle operated by the District government.

(e) No license for an emergency medical response vehicle intended to transport patients shall be issued unless the Mayor finds that the vehicle is, and will be at all times when in such use, in compliance with all applicable laws and ordinances relating to health, sanitation, and safety.

(f) No ground emergency medical response vehicle shall be operated to transport patients in the District unless it is staffed by at least 2 persons, each of whom is certified pursuant to this chapter and to rules promulgated pursuant to this chapter at a level equal to or greater than a basic emergency medical technician.

(g) No air or water emergency medical response vehicle shall be operated to transport patients in the District unless it is staffed by at least 2 persons, one of whom is a validly licensed pilot and the other of whom is certified pursuant to this chapter and to rules promulgated pursuant to this chapter at a level equal to or greater than an intermediate emergency medical technician or a paramedic.

(h) A license or certification for the operation of an emergency medical response vehicle shall be issued for a period of time not to exceed one year.

(i) A license or certification for the operation of an emergency medical response vehicle shall be valid only for the persons and vehicle named as applicants in the application. No emergency medical response vehicle license or certification shall be sold, transferred, or assigned without the approval of the Mayor. Approval may be granted only upon a demonstration that the vehicle and its operation will conform to all licensing or certification requirements set forth in this chapter and in rules promulgated pursuant to this chapter.

(Mar. 25, 2009, D.C. Law 17-357, § 5, 56 DCR 1167.)

Legislative history of Law 17-357. — For Law 17-357, see notes following § 7-2341.01.

§ 7-2341.05. Emergency medical services personnel: certification required.

(a) Except as otherwise provided in this chapter, no person shall perform the duties of emergency medical services personnel in the District, whether for compensation or not for compensation, without first having obtained a certification from the Mayor to do so.

(b) Except as otherwise provided in this chapter, no person possessing a certification to perform the duties of emergency medical services personnel shall perform the duties of emergency medical services personnel in the District, whether for compensation or not for compensation, at a higher classification level than that at which he or she has been certified.

(c) An applicant for certification as emergency medical services personnel shall establish to the satisfaction of the Mayor that he or she meets all applicable requirements set forth in this chapter and in rules promulgated pursuant to this chapter.

(d) An applicant for certification shall:

- (1) Submit an application to the Mayor on a form approved by the Mayor;
- (2) Submit supporting documentation as required by the Mayor, including proof of required education, training, competency evaluation, physical and mental health, and criminal history; and
- (3) Pay the applicable fee established by the Mayor through rulemaking;

provided, that nothing in this section shall prohibit a private entity or government agency from paying the application fee on behalf of a current or prospective employee.

(e) An emergency medical services personnel certification shall be issued for a period of time not to exceed 2 years.

(f) An emergency medical services personnel certification shall be valid only for the person named as applicant in the application. No emergency medical services personnel certification may be sold, assigned, or transferred.

(g) The Mayor shall adopt classifications of emergency medical services personnel, including permissible scopes of performance and certification requirements for each such classification. The Mayor may adopt nationally recognized standards or develop standards specific to the emergency medical services needs of the District of Columbia.

(h) The Mayor shall require each applicant for emergency medical services personnel certification to successfully complete one or more competency evaluations, demonstrating both theoretical and practical knowledge of the skills required for acceptable performance of the duties of that classification of personnel. The Mayor may adopt nationally recognized evaluations or develop evaluations specific to the emergency medical services needs of the District of Columbia.

(i) A person possessing an emergency medical services personnel certification shall be recertified, no less than once every 2 years, to continue performing the duties of emergency medical services personnel.

(j) The Mayor shall require each applicant for emergency medical services personnel recertification to successfully complete continuing professional education or supplemental training or to successfully complete one or more competency evaluations demonstrating knowledge of the skills required for acceptable performance of the duties of that classification of personnel. The Mayor may adopt nationally recognized training requirements and evaluations or develop requirements and evaluations specific to the emergency medical services needs of the District of Columbia.

(Mar. 25, 2009, D.C. Law 17-357, § 6, 56 DCR 1167.)

Legislative history of Law 17-357. — For Law 17-357, see notes following § 7-2341.01.

§ 7-2341.06. Flight emergency medical services personnel: certification required.

(a) Except as otherwise provided in this chapter, no person shall perform the duties of flight emergency medical services personnel in the District, whether for compensation or not for compensation, without first having obtained a certification from the Mayor to do so.

(b) An applicant for certification as flight emergency medical services personnel shall be certified as emergency medical services personnel pursuant to this chapter, or shall be licensed pursuant to Chapter 12 of Title 3 [§ 3-1201.01 et seq.], in addition to obtaining special certification from the Mayor to perform his or her duties in an airborne setting.

(c) An applicant for certification as flight emergency medical services personnel shall establish to the satisfaction of the Mayor that he or she meets all applicable requirements set forth in this chapter and in rules promulgated pursuant to this chapter.

(Mar. 25, 2009, D.C. Law 17-357, § 7, 56 DCR 1167.)

Legislative history of Law 17-357. — For Law 17-357, see notes following § 7-2341.01.

§ 7-2341.07. Emergency medical services training facilities: certification required.

(a) Except as otherwise provided in this chapter, no person or entity shall operate an emergency medical services training facility in the District, whether public or private, for-profit or not-for-profit, without first having obtained a certification from the Mayor to do so.

(b) An applicant for a certification to operate an emergency medical services training facility shall establish to the satisfaction of the Mayor that the facility meets all requirements set forth in this chapter and in rules promulgated pursuant to this chapter.

(c) An applicant for a certification shall:

(1) Submit an application to the Mayor on a form approved by the Mayor;

(2) Submit supporting documentation as required by the Mayor, including all certificates of approval, authority, occupancy, or need that are required as a precondition to lawful operation in the District of Columbia; and

(3) Pay the applicable fee established by the Mayor through rulemaking, except that no certification fee shall be required of any emergency medical services training facility operated by the District government.

(d) A certification to operate an emergency medical services training facility shall be issued for a period of time not to exceed 2 years.

(e) A certification to operate an emergency medical services training facility shall be valid only for the persons and premises named as applicants in the application. Any change in the ownership of a facility owned by an individual, partnership, or association, or in the legal or beneficial ownership of 25% or more of the stock of a corporation that owns or operates a facility, shall require recertification.

(f) An emergency medical services training facility shall conform to curriculum and competency evaluation standards as developed by the Mayor. The Mayor may adopt nationally recognized standards or develop standards specific to the emergency medical services needs of the District of Columbia.

(g) An emergency medical services training facility shall have a medical director. Except as provided in §§ 5-401, 5-402, 5-404, 5-404.01, and 5-407, an emergency medical services training facility shall have as its medical director a physician licensed to practice medicine in the District of Columbia. The medical director shall have responsibility for medical oversight of all operations of the facility.

(Mar. 25, 2009, D.C. Law 17-357, § 8, 56 DCR 1167.)

Legislative history of Law 17-357. — For Law 17-357, see notes following § 7-2341.01.

§ 7-2341.08. Emergency medical services instructors: certification required.

(a) Except as otherwise provided in this chapter, no person shall perform the duties of an emergency medical services instructor in the District, whether for compensation or not for compensation, without first having obtained a certification from the Mayor to do so.

(b) No person may obtain certification as an instructor for a classification of emergency medical services personnel without first having been certified pursuant to this chapter as emergency medical services personnel at an equal or higher classification, or having been licensed pursuant to Chapter 12 of Title 3 [§ 3-1201.01 et seq.] as a health care professional with a greater scope of practice. Each instructor shall maintain the requisite provider certification, as specified in this section, in good standing throughout his or her period of instructor certification.

(c) An applicant for certification as an emergency medical services instructor shall establish to the satisfaction of the Mayor that he or she meets all applicable requirements set forth in this chapter and in rules promulgated pursuant to this chapter.

(d) An applicant for certification shall:

(1) Submit an application to the Mayor on a form approved by the Mayor;

(2) Submit supporting documentation as required by the Mayor, including proof of required education, training, and competency evaluation; and

(3) Pay the applicable fee established by the Mayor through rulemaking; provided, that nothing in this section shall prohibit a private entity or government agency from paying the application fee on behalf of a current or prospective employee.

(e) An emergency medical services instructor certification shall be issued for a period of time not to exceed 2 years.

(f) An emergency medical services instructor certification shall be valid only for the person named as applicant in the application. No emergency medical services instructor certification may be sold, assigned, or transferred.

(g) The Mayor shall require each applicant for emergency medical services instructor certification to successfully complete one or more competency evaluations, demonstrating both theoretical and practical knowledge of the skills required for acceptable performance of the duties of instruction. In addition, the Mayor may require each applicant to successfully complete one or more emergency medical services instructor courses. The Mayor may adopt nationally recognized evaluations and courses or develop evaluations and courses specific to the emergency medical services needs of the District of Columbia.

(h) A person possessing an emergency medical services instructor certification shall be recertified, no less than once every 2 years, to continue performing the duties of emergency medical services instruction.

(i) The Mayor shall require each applicant for emergency medical services instructor recertification to successfully complete continuing professional

education or supplemental training or to successfully complete one or more competency evaluations demonstrating knowledge of the skills required for acceptable performance of the duties of instruction. The Mayor may adopt nationally recognized training requirements and evaluations or develop requirements and evaluations specific to the emergency medical services needs of the District of Columbia.

(Mar. 25, 2009, D.C. Law 17-357, § 9, 56 DCR 1167.)

Legislative history of Law 17-357. — For Law 17-357, see notes following § 7-2341.01.

§ 7-2341.09. Liability insurance required for vehicles, facilities, and agencies.

(a) No license shall be issued pursuant to this chapter to any emergency medical response vehicle used to transport patients unless there is, at all times in force and effect, insurance coverage for the vehicle, issued by an insurance company or companies licensed to do business in the District, providing for the payment of damages for the following:

(1) Bodily injury to, or death of, individuals in accidents resulting from any cause for which the owner of the vehicle would be liable, regardless of whether the vehicle was being operated by the owner or by his or her agent; and

(2) Loss of, or damage to, the property of another, including personal property, under similar circumstances.

(b) No certification shall be issued pursuant to this chapter to any emergency medical services training facility, on the premises of which training instruction or evaluation is conducted, unless there is, at all times in force and effect, insurance coverage for the facility premises, issued by an insurance company or companies licensed to do business in the District, providing for the payment of damages for bodily injury, death, and damage to or loss of personal property, for any reason for which the owner or operator of the premises would be liable.

(c) No license shall be issued pursuant to this chapter to any emergency medical services agency unless there is, in addition to vehicle and premises coverage as specified herein, at all times in force and effect, incidental malpractice insurance coverage specific to the duties of a medical director.

(d) The provisions of this section shall not apply to vehicles, facilities, and agencies owned and operated by agencies of the District government.

(e) The Mayor shall promulgate rules further specifying the insurance to be required of all vehicles, facilities, and agencies licensed or certified pursuant to this chapter.

(f) The cancellation or other termination of any insurance policy required pursuant to this section shall be grounds for immediate termination of the licenses or certifications issued for the vehicles, facilities, and agencies covered by the policy, unless another insurance policy complying with the provisions of this section has been obtained and is in effect at the time of the cancellation or termination.

(Mar. 25, 2009, D.C. Law 17-357, § 10, 56 DCR 1167.)

Legislative history of Law 17-357. — For Law 17-357, see notes following § 7-2341.01.

§ 7-2341.10. Provisional and restricted licenses and certifications.

(a) The Mayor may issue provisional licenses or certifications to new emergency medical services agencies or training facilities to afford the Mayor sufficient time and evidence to evaluate whether a new agency or facility is capable of complying with the provisions of this chapter, rules promulgated pursuant to this chapter, and other applicable provisions of law.

(b) As an alternative to denial, nonrenewal, suspension, or revocation of a license or certification, when an agency, facility, or vehicle is not in substantial compliance with the provisions of this chapter, rules promulgated pursuant to this chapter, or other applicable provisions of law, and when the Mayor finds that the public interest would be served thereby, the Mayor may:

(1) Issue a provisional license or certification, if the owner or operator of the agency, facility, or vehicle is taking appropriate ameliorative action in accordance with an agreed-upon timetable; or

(2) Issue a restricted license or certification that prohibits the agency, facility, or vehicle from accepting new patients or students, or from delivering certain specified services that it would otherwise be authorized to deliver, until appropriate ameliorative action is taken.

(c) The Mayor may issue provisional certifications to emergency medical services personnel who do not fully meet the requirements specified in this chapter or in rules promulgated pursuant to this chapter if the Mayor finds that the public interest would be served thereby.

(d) Provisional licenses or certifications issued pursuant to this section may be granted for a period of time up to and including 180 days, and may be renewed no more than once.

(Mar. 25, 2009, D.C. Law 17-357, § 11, 56 DCR 1167.)

Legislative history of Law 17-357. — For Law 17-357, see notes following § 7-2341.01.

§ 7-2341.11. Licenses and certifications issued pursuant to prior authority.

Except as otherwise provided in this chapter, any emergency medical services agency, ambulance or other emergency medical response vehicle, emergency medical technician or paramedic, emergency medical services instructor or preceptor, or emergency medical services training facility currently licensed or certified pursuant to the Regulation to Establish Standards for Ambulances and Medical Personnel and to Provide for their Certification, enacted December 13, 1972 (Reg. 72-29; 29 DCMR §§ 500 et seq.) (“Ambulance and Medical Personnel Regulation”), as amended, shall be considered licensed or certified pursuant to this chapter, and shall be subject to the renewal

requirements established by this chapter and by rules promulgated pursuant to this chapter.

(Mar. 25, 2009, D.C. Law 17-357, § 12, 56 DCR 1167.)

Legislative history of Law 17-357. — For Law 17-357, see notes following § 7-2341.01.

§ 7-2341.12. Reciprocity for emergency medical services personnel certified in other jurisdictions.

(a) The Mayor may grant provisional certification, at the equivalent classification level, to any individual possessing a current valid emergency medical services personnel credential issued by any state or United States territory.

(b) The provisional certification issued pursuant to this section shall be effective for a period not to exceed 90 days.

(c) The Mayor may fully certify the individual as emergency medical services personnel in the District of Columbia, at the appropriate classification level, upon verification from the state or territory originally granting certification that the individual has successfully completed training and competency evaluation equivalent to that required by the Mayor by this chapter and by rules promulgated pursuant to this chapter, or upon the successful completion by the individual of the District's competency evaluation at the appropriate classification level.

(Mar. 25, 2009, D.C. Law 17-357, § 13, 56 DCR 1167.)

Legislative history of Law 17-357. — For Law 17-357, see notes following § 7-2341.01.

§ 7-2341.13. Powers and duties of the Mayor.

(a) To ensure compliance with the provisions of this chapter and of any rules promulgated pursuant to this chapter, the Mayor, or any duly authorized designee, shall be permitted at reasonable times to conduct an inspection of any agency, vehicle, or training facility, or to conduct a competency evaluation of any person, licensed or certified pursuant to this chapter or for which a licensure or certification application has been filed.

(b) In the alternative or in addition to conducting an inspection or evaluation, the Mayor, or any duly authorized designee, shall be permitted to demand the production of all records relating to the operation of any agency, vehicle, or training facility, or to the performance of duties by any person, licensed or certified pursuant to this chapter or for which a licensure or certification application has been filed.

(c) To ensure compliance with the provisions of this chapter and of any rules promulgated pursuant to this chapter, the Mayor may conduct investigations, as needed, and may administer oaths, examine witnesses, and issue subpoenas to compel the attendance and testimony of witnesses or the production of books, records, or other documents. In case of contempt or refusal to obey a subpoena, the Superior Court of the District of Columbia, at the request of the

Mayor, shall issue an order requiring the person to appear and testify or to produce books, papers, or other evidence bearing on the investigation. Failure to obey the court's order shall be punishable as contempt of court.

(d) The Mayor shall maintain and make available to the public information concerning:

- (1) Application, licensure, and renewal requirements and procedures;
- (2) An official register of licensed or certified emergency medical services agencies and emergency medical services training facilities; and
- (3) Trauma and emergency care data as required by this chapter and by rules promulgated pursuant to this chapter.

(Mar. 25, 2009, D.C. Law 17-357, § 14, 56 DCR 1167.)

Legislative history of Law 17-357. — For Law 17-357, see notes following § 7-2341.01.

§ 7-2341.14. License and certification renewal.

(a) An application for renewal of a license or certification shall be submitted to the Mayor no later than 90 days before expiration of the license or certification, on a form approved by the Mayor, accompanied by the appropriate renewal fee established by the Mayor through rulemaking. An application for renewal submitted later than 90 days before expiration shall be subject to a late fee.

(b) A license or certification issued pursuant to this chapter for which timely renewal application is made shall continue in force beyond the expiration date until the Mayor acts on the renewal application.

(Mar. 25, 2009, D.C. Law 17-357, § 15, 56 DCR 1167.)

Legislative history of Law 17-357. — For Law 17-357, see notes following § 7-2341.01.

§ 7-2341.15. Denial, suspension, and revocation of license or certification.

(a) The Mayor, subject to the right to a hearing as provided in § 7-2341.17, may deny issuance of, deny renewal of, suspend, or revoke a license or certification to operate an emergency medical services agency, an emergency medical response vehicle, or an emergency medical services training facility to a person or entity which is found to have:

- (1) Failed to comply with the applicable provisions of this chapter or of rules promulgated pursuant to this chapter;
- (2) Failed to comply with any other federal or District law applicable to the operation of an emergency medical services agency, an emergency medical response vehicle, or an emergency medical services training facility; or
- (3) Committed, aided, abetted, or permitted to be committed any chapter of dishonesty, fraud, gross negligence, abuse, assault, or other illegal act related to the operation of the agency, vehicle, or facility.

(b) The Mayor, subject to the right to a hearing as provided in § 7-2341.17,

may deny issuance of, deny renewal of, suspend, or revoke a certification to perform the duties of emergency medical services personnel or of an emergency medical services instructor to an individual who is found to have:

(1) Failed to comply with the applicable provisions of this chapter or of rules promulgated pursuant to this chapter;

(2) Failed to comply with any other federal or District law applicable to the duties of emergency medical services personnel or an emergency medical services instructor;

(3) Filed a false document or made a false statement to the government regarding his or her qualifications for the emergency medical services personnel or instructor position;

(4) Committed, aided, abetted, or permitted to be committed any act of dishonesty, fraud, gross negligence, abuse, assault, or other illegal act related to the performance of his or her duties; or

(5) Committed, aided, abetted, or permitted to be committed repeated acts of malfeasance, negligence, or dereliction of duty, or any act of malfeasance, negligence, or dereliction of duty resulting in demonstrable harm to a patient, related to the performance of his or her duties.

(c) Upon suspension, revocation, or termination of a license or certification to operate an emergency medical services agency, emergency medical response vehicle, or emergency medical services training facility, the owner or operator of the agency, vehicle, or facility so certified shall immediately surrender the license or certification, and the agency, vehicle, or facility shall immediately cease emergency medical services operations. In the case of a vehicle used to transport patients, no person or entity shall permit the vehicle to be used for that purpose.

(d) Upon suspension, revocation, or termination of a certification to perform the duties of emergency medical services personnel or an emergency medical services instructor, the individual so certified shall immediately surrender his or her certification, and shall immediately cease to perform emergency medical services or instruction duties. No person, entity, or government agency shall employ the individual, or permit the individual to act, in that capacity.

(Mar. 25, 2009, D.C. Law 17-357, § 16, 56 DCR 1167.)

Legislative history of Law 17-357. — For Law 17-357, see notes following § 7-2341.01.

§ 7-2341.16. Summary suspension.

(a) If, after an investigation, the Mayor determines that an agency, vehicle, person, or facility licensed or certified pursuant to this chapter has failed to comply with the provisions of this chapter, or with rules promulgated pursuant to this chapter, in such a manner as to present an imminent danger to the health, safety, or welfare of any person or of the general public, the Mayor may summarily suspend the license or certification prior to a hearing.

(b) The Mayor shall provide as soon as possible the person, or the owner or operator of the agency, vehicle, or facility, licensed or certified with written

notice of the summary suspension. The notice shall inform the affected person or entity of the reason for the suspension and of the right to request a hearing.

(c) The person, or owner or operator of the agency, vehicle, or facility, shall have 5 business days after service of the notice of summary suspension in which to request a hearing to challenge the summary suspension. If requested, the hearing shall be conducted by the Office of Administrative Hearings. A hearing shall be held within 5 business days of a timely request, and a decision shall be issued within 5 business days after the record is closed.

(Mar. 25, 2009, D.C. Law 17-357, § 17, 56 DCR 1167.)

Legislative history of Law 17-357. — For Law 17-357, see notes following § 7-2341.01.

§ 7-2341.17. Hearings.

(a) Except in the case of a summary suspension as provided in § 7-2341.16, before the Mayor denies an application for initial or renewal licensure or certification, or suspends or revokes a license or certification, or imposes a civil fine, the Mayor shall give the person, or the owner or operator of the agency, vehicle, or facility, against whom the action is contemplated written notice of the contemplated action. The notice must inform the affected person or entity of the reason for the action and of the right to request a hearing.

(b) If requested, the hearing shall be conducted by the Office of Administrative Hearings.

(Mar. 25, 2009, D.C. Law 17-357, § 18, 56 DCR 1167.)

Legislative history of Law 17-357. — For Law 17-357, see notes following § 7-2341.01.

§ 7-2341.18. Judicial review.

A person or entity aggrieved by a decision of the Office of Administrative Hearings may appeal the decision to the District of Columbia Court of Appeals in accordance with Chapter 5 of Title 2 [§ 2-501 et seq.] and pursuant to Chapter 18A of Title 2 [§ 2-1831.01 et seq.].

(Mar. 25, 2009, D.C. Law 17-357, § 19, 56 DCR 1167.)

Legislative history of Law 17-357. — For Law 17-357, see notes following § 7-2341.01.

§ 7-2341.19. Trauma care system.

(a) The Mayor shall establish criteria for the designation of, and shall designate, one or more hospitals within the District of Columbia as specialized trauma care facilities.

(b) The Mayor may establish criteria for the designation of, and may designate, one or more hospitals within the District of Columbia as specialized care facilities for other types of commonly occurring medical emergencies.

(c) The Mayor may establish and maintain a database of information

regarding trauma and emergency medical care services provided within the District of Columbia. All hospitals, health care facilities, and treatment facilities receiving emergency medical care patients, and all entities providing emergency medical care services, shall provide data to the Mayor as specified in rulemaking promulgated pursuant to this chapter.

(d) To the extent that trauma and emergency medical care records compiled and maintained by the Mayor, hospitals, other health care facilities, treatment facilities, or emergency medical services providers in connection with the trauma and emergency medical care information system pursuant to this chapter contain patient identifiable data, that data shall be maintained pursuant to applicable privacy laws.

(Mar. 25, 2009, D.C. Law 17-357, § 20, 56 DCR 1167.)

Legislative history of Law 17-357. — For Law 17-357, see notes following § 7-2341.01.

§ 7-2341.20. Advertising.

(a) No person, entity, or government agency shall advertise or disseminate information to the public that it offers ambulance service, unless that service is provided by persons certified pursuant to this chapter and to rules promulgated pursuant to this chapter at a level equal to or greater than a basic emergency medical technician.

(b) No person, entity, or government agency shall advertise or disseminate information to the public that it offers emergency medical services training, unless that training is provided by persons certified as emergency medical services instructors pursuant to this chapter and to rules promulgated pursuant to this chapter.

(Mar. 25, 2009, D.C. Law 17-357, § 21, 56 DCR 1167.)

Legislative history of Law 17-357. — For Law 17-357, see notes following § 7-2341.01.

§ 7-2341.21. Emergency medical services for children.

The Mayor shall establish, in collaboration with a licensed hospital within the District of Columbia specializing in pediatric care, a program of emergency medical services for children. The purpose of this program shall be to continue, to the extent that funds are made available through federal government grants, District appropriated funds, or private sources, the operation and development of programs designed to improve the emergency medical care provided to children within the District of Columbia.

(Mar. 25, 2009, D.C. Law 17-357, § 22, 56 DCR 1167.)

Legislative history of Law 17-357. — For Law 17-357, see notes following § 7-2341.01.

§ 7-2341.22. Establishment of District of Columbia Emergency Medical Services Advisory Committee.

(a) There is established a District of Columbia Emergency Medical Services Advisory Committee ("EMSAC").

(b) EMSAC shall advise the Mayor, the Chief and the Medical Director of the Fire and Emergency Medical Services Department, the Director of the Department of Health, the Director of the Department of Mental Health, and the Director of the Homeland Security Emergency Management Agency regarding issues related to emergency medical services in the District of Columbia.

(c) EMSAC shall perform the following functions:

(1) Advise on the best practices in emergency medical services across the United States to assist in establishing performance goals for emergency medical services in the District;

(2) Recommend standards, or revisions to existing standards, to be applied to the delivery of emergency medical services in accordance with the appropriate District, federal, and Washington regional statutes, rules, regulations, and inter-jurisdictional agreements;

(3) Advise on the development of a program of public information and education with respect to emergency medical services;

(4) Advise on the development of an emergency medical data collection system for the District, and on the categorization of emergency facilities and services;

(5) Advise on the coordination of District emergency medical services with those emergency medical service activities and projects coordinated through the Metropolitan Washington Council of Governments;

(6) Provide biennial comments on the operations of emergency medical services in the District; and

(7) Undertake other duties as assigned by the Mayor, or his or her designee.

(d) EMSAC shall be comprised of 17 members, 11 of whom shall be voting members appointed by the Mayor, and shall include:

(1) Voting members:

(A) Two representatives of hospitals, including trauma centers, located in the District;

(B) One representative of a professional medical organization concerned with emergency medical services;

(C) One representative of a professional health organization, or institution, concerned with emergency health services;

(D) One representative of labor organizations representing emergency medical services personnel;

(E) One representative concerned with pediatric trauma care;

(E) One representative of a commercial ambulance service; and

(F) Four community representatives, including at least one person representing each of the following:

(i) Seniors or elders;

- (ii) Persons with disabilities;
 - (iii) The Latino community; and
 - (iv) The Gay, Lesbian, Bisexual, and Transgendered community.
- (2) The 6 non-voting, ex officio members shall be:
- (A) The Director of the Department of Health, or his or her designee;
 - (B) The Director of the Fire and Emergency Medical Services Department, or his or her designee;
 - (C) The Director of the Department of Mental Health, or his or her designee;
 - (D) The Director of the Homeland Security and Emergency Management Agency, or his or her designee;
 - (E) The Director of the Department of Human Services, or his or her designee; and
 - (F) The Mayor's Policy Advisor on Health and Human Services.
- (3) Members of EMSAC shall serve without compensation.

(Mar. 25, 2009, D.C. Law 17-357, § 23, 56 DCR 1167.)

Legislative history of Law 17-357. — For Law 17-357, see notes following § 7-2341.01.

§ 7-2341.23. Rulemaking.

- (a) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], shall issue rules to implement the provisions of this chapter, including:
- (1) Minimum standards of operation of an emergency medical services agency, including:
- (A) Medical director and staff qualifications and responsibilities;
 - (B) Premises and equipment standards;
 - (C) Hours and scope of operation;
 - (D) Safety and health standards; and
 - (E) Record keeping and reporting requirements;
- (2) Minimum standards of operation of an emergency medical response vehicle, including:
- (A) Operator and attendant qualifications;
 - (B) Vehicle, equipment, and supplies requirements;
 - (C) Safety and health standards; and
 - (D) Record keeping and reporting requirements;
- (3) Minimum standards of qualification and performance for emergency medical services personnel at each classification level, including:
- (A) Permissible scope of practice and practice settings;
 - (B) Education and training;
 - (C) Competency evaluations;
 - (D) Health requirements;
 - (E) Character standards; and
 - (F) Recertification requirements;
- (4) Minimum standards of qualification and performance for emergency medical services instructors, including:
- (A) Education and training;

- (B) Competency evaluations; and
- (C) Recertification requirements;
- (5) Minimum standards of operation of an emergency medical services training facility, including:
 - (A) Premises and equipment standards;
 - (B) Director and instructor qualifications and responsibilities;
 - (C) Curricula and course contents;
 - (D) Competency evaluations; and
 - (E) Record keeping and reporting requirements;
- (6) Licensure and certification application, issuance, and renewal procedures;
- (7) Grounds and procedures for denial, non-renewal, suspension, and revocation of a license or certification;
- (8) Standards and requirements for the operation of a 24-hour emergency response vehicle service;
- (9) Minimum standards and criteria for the designation of specialized trauma care facilities, and for the designation of other specialized emergency medical care facilities as considered warranted by the Mayor;
- (10) Standards and criteria for emergency medical care data collection;
- (11) Encouraging health-care facilities, including long-term care and assisted living facilities, to provide or procure inter-facility transport services independent of the 911 emergency system for their non-emergent needs; provided, that this does not limit the authority of the Medical Director of the Fire and Emergency Medical Services Department pursuant to §§ 5-401, 5-402, 5-404, 5-404.01, and 5-407; and
- (12) The establishment of a fee schedule to recover the costs of regulating emergency medical services agencies, emergency medical response vehicles, emergency medical services personnel, and emergency medical services training facilities and instructors pursuant to this chapter.
- (b) The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(Mar. 25, 2009, D.C. Law 17-357, § 24, 56 DCR 1167.)

Legislative history of Law 17-357. — For Law 17-357, see notes following § 7-2341.01.

§ 7-2341.24. Criminal and civil penalties.

- (a) Any person or entity who violates any provision of this chapter shall, upon conviction, be subject to imprisonment not to exceed 180 days, a fine not to exceed \$1,000, or both. Each unlawful act shall constitute a separate violation.
- (b) Any person or entity who has been previously convicted pursuant to this chapter shall, upon conviction for a subsequent violation, be subject to imprisonment not to exceed one year, a fine not to exceed \$5,000, or both.

(c) Civil fines and penalties may be imposed as alternative sanctions for any violations of the provisions of this chapter or of rules promulgated under the authority of this chapter, pursuant to Chapter 18 of Title 2 [§ 2-1801.01 et seq.]. The adjudication of any infraction shall be conducted by the Office of Administrative Hearings, pursuant to Chapter 18A of Title 2 [§ 2-1831.01 et seq.], and to Chapter 18 of Title 2 [§ 2-1801.01 et seq.], and to rules promulgated pursuant to those chapters.

(Mar. 25, 2009, D.C. Law 17-357, § 25, 56 DCR 1167.)

Legislative history of Law 17-357. — For Law 17-357, see notes following § 7-2341.01.

§ 7-2341.25. Prosecutions.

(a) Criminal prosecutions for violations of this chapter shall be brought by the Attorney General for the District of Columbia in the name of the District of Columbia.

(b) In any prosecution initiated pursuant to this chapter, a person or entity claiming an exemption from a licensing or certification requirement of this chapter shall have the burden of proving entitlement to the exemption.

(Mar. 25, 2009, D.C. Law 17-357, § 26, 56 DCR 1167.)

Legislative history of Law 17-357. — For Law 17-357, see notes following § 7-2341.01.

§ 7-2341.26. Injunctions.

(a) The Attorney General for the District of Columbia may bring an action in the Superior Court of the District of Columbia, in the name of the District of Columbia, to enjoin any violation of this chapter.

(b) The remedy established by this section shall be in addition to criminal sanctions, civil sanctions, and disciplinary action initiated by the Mayor.

(c) In any proceeding brought pursuant to this section, it shall not be necessary to prove that any person has been injured by the violation alleged.

(Mar. 25, 2009, D.C. Law 17-357, § 27, 56 DCR 1167.)

Legislative history of Law 17-357. — For Law 17-357, see notes following § 7-2341.01.

§ 7-2341.27. Repeal of existing regulations.

(a) To the extent not explicitly superseded by the provisions of this chapter, the Ambulance and Medical Personnel Regulation (29 DCMR § 500 et seq.) shall remain in effect until superseded by rules promulgated by the Mayor pursuant to the authority of this chapter. Upon the effective date of rules promulgated pursuant to this chapter, each superseded portion of the Ambulance and Medical Personnel Regulation shall be deemed repealed.

(b) The Adult Trauma Care rules (22 DCMR § 2700 et seq.) and the Pediatric Trauma care rules (22 DCMR § 2800 et seq.) shall remain in effect

until superseded by new trauma care rules promulgated pursuant to this chapter.

(Mar. 25, 2009, D.C. Law 17-357, § 28, 56 DCR 1167.)

Legislative history of Law 17-357. — For Law 17-357, see notes following § 7-2341.01.

§ 7-2341.28. Pending actions and proceedings; existing orders.

(a) No judicial or administrative proceeding commenced by or against any emergency medical services agency, emergency medical response vehicle owner or operator, emergency medical services training facility or instructor, emergency medical technician, or paramedic shall abate by reason of the taking effect of this chapter. Each such action or proceeding shall be continued with substitution as to parties and government agencies as appropriate.

(b) All decisions issued pursuant to the Ambulance and Medical Personnel Regulation (29 DCMR § 500 et seq.) shall continue in effect until modified, rescinded, or superseded by regulations issued pursuant to this chapter.

(Mar. 25, 2009, D.C. Law 17-357, § 29, 56 DCR 1167.)

Legislative history of Law 17-357. — For Law 17-357, see notes following § 7-2341.01.

§ 7-2341.29. Applicability.

This chapter shall apply 90 days after March 25, 2009.

(Mar. 25, 2009, D.C. Law 17-357, § 30, 56 DCR 1167.)

Legislative history of Law 17-357. — For Law 17-357, see notes following § 7-2341.01.

CHAPTER 23C. UNIFORM EMERGENCY VOLUNTEER HEALTH PRACTITIONERS.

| Sec. | Sec. |
|--|---|
| 7-2361.01. Definitions. | 7-2361.07. Provision of volunteer health or veterinary services; unauthorized practice sanctions. |
| 7-2361.02. Applicability to volunteer health practitioners. | 7-2361.08. Relation to other laws. |
| 7-2361.03. Regulation of services during emergency. | 7-2361.09. Regulatory authority. |
| 7-2361.04. Volunteer health practitioner registration systems. | 7-2361.10. Civil liability for volunteer health practitioners; vicarious liability. |
| 7-2361.05. Recognition of volunteer health practitioners licensed in other states. | 7-2361.11. Workers' compensation coverage. |
| 7-2361.06. No effect on credentialing and privileging. | 7-2361.12. Uniformity of application and construction. |

§ 7-2361.01. Definitions.

For the purposes of this chapter, the term:

(1) "Disaster relief organization" means an entity that provides emergency or disaster relief services that include health or veterinary services provided by volunteer health practitioners and that:

(A) Is designated or recognized as a provider of those services pursuant to a disaster response and recovery plan adopted by an agency of the federal government or the Mayor; or

(B) Regularly plans and conducts its activities in coordination with an agency of the federal government or the Mayor.

(2) "Emergency" means an event or condition that is a public emergency, as defined by § 7-2301(3).

(3) "Emergency declaration" means a declaration of emergency issued by a person authorized to do so under the laws of the District.

(4) "Emergency Management Assistance Compact" means the interstate compact approved by Congress by the Joint Resolution Granting the consent of Congress to the Emergency Management Assistance Compact, approved October 19, 1996 (Pub. L. No. 104-321; 110 Stat. 3877) [see also D.C. Code § 7-2332].

(5) "Entity" means a person other than an individual.

(6) "Health facility" means an entity licensed under the laws of this or another state to provide health or veterinary services.

(7) "Health practitioner" means an individual licensed under the laws of this or another state to provide health or veterinary services.

(8) "Health services" means the provision of treatment, care, advice or guidance, or other services, or supplies, related to the health or death of individuals, or human populations, to the extent necessary to respond to an emergency, including:

(A) The following, concerning the physical or mental condition or functional status of an individual or affecting the structure or function of the body:

- (i) Preventive care;
- (ii) Diagnostic care;

- (iii) Therapeutic care;
- (iv) Rehabilitative care;
- (v) Maintenance care;
- (vi) Palliative care;
- (vii) Counseling services;
- (viii) Assessment services;
- (ix) Procedural services; or
- (x) Other services;

(B) The sale or dispensing of a drug, a device, equipment, or another item to an individual in accordance with a prescription; and

(C) Funeral, cremation, cemetery, or other mortuary services.

(9) “Host entity” means an entity operating in the District that uses volunteer health practitioners to respond to an emergency.

(10) “License” means authorization by a state to engage in health or veterinary services that are unlawful without the authorization. The term includes authorization under the laws of the District to an individual to provide health or veterinary services based upon a national certification issued by a public or private entity.

(11) “Mayor” means the Mayor of the District of Columbia.

(12) “Person” means an individual, corporation, business trust, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity. The term “person” includes the government of the District of Columbia.

(13) “Registration system” means a system for registering volunteer health practitioners that meets the requirements in § 7-2361.04.

(14) “Scope of practice” means the extent of the authorization to provide health or veterinary services granted to a health practitioner by a license issued to the practitioner in the state in which the principal part of the practitioner’s services are rendered, including any conditions imposed by the licensing authority.

(15) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(16) “Veterinary services” means the provision of treatment, care, advice or guidance, or other services, or supplies, related to the health or death of an animal or to animal populations, to the extent necessary to respond to an emergency, including the:

- (A) Diagnosis, treatment, or prevention of an animal disease, injury, or other physical or mental condition by the prescription, administration, or dispensing of:
 - (i) A vaccine;
 - (ii) Medicine;
 - (iii) Surgery; or
 - (iv) Therapy;
- (B) Use of a procedure for reproductive management; and
- (C) Monitoring and treatment of animal populations for diseases that have spread or demonstrate the potential to spread to humans.

(17) “Volunteer health practitioner” means a health practitioner who provides health or veterinary services, whether or not the practitioner receives compensation for those services, including an employee of the federal government. The term “volunteer health practitioner” does not include a practitioner who receives compensation pursuant to a preexisting employment relationship with a host entity or affiliate that requires the practitioner to provide health services in the District, unless the practitioner is employed by a disaster relief organization while an emergency declaration is in effect.

(July 1, 2010, D.C. Law 18-184, § 2, 57 DCR 3655.)

Legislative history of Law 18-184. — Law 18-184, the “Uniform Emergency Volunteer Health Practitioners Act of 2010”, was introduced in Council and assigned Bill No. 18-71, which was referred to the Committee on Health, Public Safety and the Judiciary. The Bill was adopted on first and second readings on March 2, 2010, and March 16, 2010, respec-

tively. Signed by the Mayor on April 26, 2010, it was assigned Act No. 18-383 and transmitted to both Houses of Congress for its review. D.C. Law 18-184 became effective on July 1, 2010.

Editor’s notes. — Uniform Law: This section is based upon § 2 of the Uniform Emergency Volunteer Health Practitioners Act.

§ 7-2361.02. Applicability to volunteer health practitioners.

This chapter applies to volunteer health practitioners registered with a registration system that complies with § 7-2361.04 and who provide health or veterinary services in the District for a host entity while an emergency declaration is in effect.

(July 1, 2010, D.C. Law 18-184, § 3, 57 DCR 3655.)

Legislative history of Law 18-184. — For Law 18-184, see notes following § 7-2361.01.

Editor’s notes. — Uniform Law: This sec-

tion is based upon § 3 of the Uniform Emergency Volunteer Health Practitioners Act.

§ 7-2361.03. Regulation of services during emergency.

(a) While an emergency declaration is in effect, the Mayor may issue a Mayor’s order that limits, restricts, or otherwise regulates:

- (1) The duration of practice by volunteer health practitioners;
- (2) The geographical areas in which volunteer health practitioners may practice;
- (3) The types of volunteer health practitioners who may practice; and
- (4) Any other matter necessary to coordinate effectively the provision of health or veterinary services during the emergency.

(b) An order issued pursuant to subsection (a) of this section may take effect immediately, without prior notice or comment, and is not a rule within the meaning of subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.].

(c) A host entity that uses volunteer health practitioners to provide health or veterinary services in the District shall:

- (1) Consult and coordinate its activities with the Mayor to the extent practicable to provide for the efficient and effective use of volunteer health practitioners; and

(2) Comply with all District laws relating to the management of emergency health or veterinary services, including Chapter 23 of this title [§ 7-2301.01 et seq.].

(July 1, 2010, D.C. Law 18-184, § 4, 57 DCR 3655.)

Legislative history of Law 18-184. — For Law 18-184, see notes following § 7-2361.01.
Editor's notes. — Uniform Law: This section is based upon § 4 of the Uniform Emergency Volunteer Health Practitioners Act.

§ 7-2361.04. Volunteer health practitioner registration systems.

(a) To qualify as a volunteer health practitioner registration system, a registration system must:

- (1) Accept applications for the registration of volunteer health practitioners before or during an emergency;
- (2) Include information about the licensure and good standing of health practitioners that is accessible by authorized persons;
- (3) Be capable of confirming the accuracy of information concerning whether a health practitioner is licensed and in good standing before health services or veterinary services are provided under this chapter; and
- (4) Meet one of the following conditions:

(A) Be an emergency system for advance registration of volunteer health-care practitioners established by a state and funded through the Health Resources Services Administration under section 319I of the Public Health Service Act, approved June 12, 2002 (116 Stat. 608; 42 U.S.C. § 247d-7b);

(B) Be a local unit consisting of trained and equipped emergency response, public health, and medical personnel formed pursuant to section 2801 of the Public Health Service Act, approved June 12, 2002 (116 Stat. 596; 42 U.S.C. 300hh);

(C) Be operated by a:

- (i) Disaster relief organization;
- (ii) Licensing board;
- (iii) National or regional association of licensing boards or health practitioners;
- (iv) Health facility that provides comprehensive inpatient and outpatient health-care services, including a tertiary care and teaching hospital; or
- (v) Governmental entity; or

(D) Be designated by the Mayor as a registration system for purposes of this chapter.

(b) While an emergency declaration is in effect, the Mayor, the Mayor's designee, or a host entity may confirm whether volunteer health practitioners utilized in the District are registered with a registration system that complies with subsection (a) of this section. Confirmation is limited to obtaining the identities of the practitioners from the system and determining whether the system indicates that the practitioners are licensed and in good standing.

(c) Upon request of the Mayor, the Mayor's designee, or a host entity pursuant to subsection (b) of this section, or a similarly authorized person in

another state, the entity operating a registration system located in the District shall notify the authorized person of the identities of volunteer health practitioners and whether the practitioners are licensed and in good standing.

(d) A host entity is not required to use the services of a volunteer health practitioner even if the practitioner is registered with a registration system that indicates that the practitioner is licensed and in good standing.

(July 1, 2010, D.C. Law 18-184, § 5, 57 DCR 3655.)

Legislative history of Law 18-184. — For Law 18-184, see notes following § 7-2361.01. tion is based upon § 5 of the Uniform Emergency Volunteer Health Practitioners Act.

Editor's notes. — Uniform Law: This sec-

§ 7-2361.05. Recognition of volunteer health practitioners licensed in other states.

(a) While an emergency declaration is in effect, a volunteer health practitioner registered with a registration system that complies with § 7-2361.04 and licensed and in good standing in the state upon which the practitioner's registration is based may practice in the District to the extent authorized by this chapter as if the practitioner were licensed in the District.

(b) A volunteer health practitioner qualified under subsection (a) of this section is not entitled to the protections of this chapter if the practitioner is licensed in more than one state and any license of the practitioner is suspended, revoked, or subject to an agency order limiting or restricting practice privileges, or has been voluntarily terminated under threat of sanction.

(July 1, 2010, D.C. Law 18-184, § 6, 57 DCR 3655.)

Legislative history of Law 18-184. — For Law 18-184, see notes following § 7-2361.01. tion is based upon § 6 of the Uniform Emergency Volunteer Health Practitioners Act.

Editor's notes. — Uniform Law: This sec-

§ 7-2361.06. No effect on credentialing and privileging.

(a) Except as provided in subsection (b) of this section, this chapter does not affect the credentialing or privileging standards of a health facility and does not preclude a health facility from waiving or modifying those standards while an emergency declaration is in effect.

(b) The Mayor may issue rules, pursuant to § 7-2361.09, establishing credentialing standards applicable while an emergency declaration is in effect.

(c) For the purposes of this section, the term:

(1) "Credentialing" means obtaining, verifying, and assessing the qualifications of a health practitioner to provide treatment, care, or services in or for a health facility.

(2) "Privileging" means the authorizing by an appropriate authority, such as a governing body, of a health practitioner to provide specific treatment, care, or services at a health facility subject to limits based on factors that include:

(A) License;

(B) Education;

- (C) Training;
- (D) Experience;
- (E) Competence;
- (F) Health status; and
- (G) Specialized skill.

(July 1, 2010, D.C. Law 18-184, § 7, 57 DCR 3655.)

Legislative history of Law 18-184. — For Law 18-184, see notes following § 7-2361.01.
Editor's notes. — Uniform Law: This section is based upon § 7 of the Uniform Emergency Volunteer Health Practitioners Act.

§ 7-2361.07. Provision of volunteer health or veterinary services; unauthorized practice sanctions.

(a) A volunteer health practitioner shall not:

(1) Practice outside of the scope of practice for a similarly licensed practitioner established by the licensing provisions, practice acts, or other laws of the District; or

(2) Provide services that are outside the practitioner's scope of practice, even if a similarly licensed practitioner in the District would be permitted to provide the services.

(b) The Mayor may issue a Mayor's order that modifies or restricts the health or veterinary services that volunteer health practitioners may provide pursuant to this chapter. An order under this subsection may take effect immediately, without prior notice or comment, and is not a rule within the meaning of subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.].

(c) A host entity may restrict the health or veterinary services that a volunteer health practitioner may provide pursuant to this chapter.

(d)(1) A volunteer health practitioner does not engage in unauthorized practice under this section unless the practitioner has reason to know of any limitation, modification, or restriction relating to his or her practice or that a similarly licensed practitioner in the District would not be permitted to provide the services.

(2) A volunteer health practitioner has reason to know of a limitation, modification, or restriction or that a similarly licensed practitioner in the District would not be permitted to provide a service if:

(A) The practitioner knows the limitation, modification, or restriction exists or that a similarly licensed practitioner in the District would not be permitted to provide the service; or

(B) From all the facts and circumstances known to the practitioner at the relevant time, a reasonable person would conclude that the limitation, modification, or restriction exists or that a similarly licensed practitioner in the District would not be permitted to provide the service.

(e) In addition to the authority granted by District law other than this chapter to regulate the conduct of health practitioners, a licensing board or other disciplinary authority in the District:

(1) May impose administrative sanctions upon a health practitioner

licensed in the District for conduct outside of the District in response to an out-of-state emergency;

(2) May impose administrative sanctions upon a practitioner not licensed in the District for conduct in the District in response to an in-state emergency; and

(3) Shall report any administrative sanctions imposed upon a practitioner licensed in another state to the appropriate licensing board or other disciplinary authority in any other state in which the practitioner is known to be licensed.

(f) In determining whether to impose administrative sanctions under subsection (e) of this section, a licensing board or other disciplinary authority shall consider the circumstances in which the conduct took place, including any exigent circumstances, and the practitioner's:

- (1) Scope of practice;
- (2) Education;
- (3) Training;
- (4) Experience; and
- (5) Specialized skill.

(July 1, 2010, D.C. Law 18-184, § 8, 57 DCR 3655.)

Legislative history of Law 18-184. — For Law 18-184, see notes following § 7-2361.01.

Editor's notes. — Uniform Law: This sec-

tion is based upon § 8 of the Uniform Emergency Volunteer Health Practitioners Act.

§ 7-2361.08. Relation to other laws.

(a) This chapter does not limit rights, privileges, or immunities provided to volunteer health practitioners by laws other than this chapter. Except as otherwise provided in subsection (b) of this section, this chapter does not affect requirements for the use of health practitioners pursuant to the Emergency Management Assistance Compact.

(b) The Mayor, pursuant to the Emergency Management Assistance Compact, may incorporate into the emergency forces of the District volunteer health practitioners who are not officers or employees of the District.

(July 1, 2010, D.C. Law 18-184, § 9, 57 DCR 3655.)

Legislative history of Law 18-184. — For Law 18-184, see notes following § 7-2361.01.

Editor's notes. — Uniform Law: This sec-

tion is based upon § 9 of the Uniform Emergency Volunteer Health Practitioners Act.

§ 7-2361.09. Regulatory authority.

(a) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], may issue rules to implement the provisions of this chapter.

(b) In issuing rules under subsection (a) of this section, the Mayor shall consult with and consider the recommendations of the entities established to coordinate the implementation of the Emergency Management Assistance Compact in the District and in other states to promote uniformity of applica-

tion of this chapter and make the emergency response systems in the various states reasonably compatible.

(July 1, 2010, D.C. Law 18-184, § 10, 57 DCR 3655.)

Legislative history of Law 18-184. — For Law 18-184, see notes following § 7-2361.01.

Editor's notes. — Uniform Law: This sec-

tion is based upon § 10 of the Uniform Emergency Volunteer Health Practitioners Act.

§ 7-2361.10. Civil liability for volunteer health practitioners; vicarious liability.

(a) Subject to subsection (c) of this section, a volunteer health practitioner who provides health or veterinary services pursuant to this chapter is not liable for damages for an act or omission of the practitioner in providing those services.

(b) No person is vicariously liable for damages for an act or omission of a volunteer health practitioner if the practitioner is not liable for the damages under subsection (a) of this section.

(c) This section does not limit the liability of a volunteer health practitioner for:

(1) Willful misconduct or wanton, grossly negligent, reckless, or criminal conduct;

(2) An intentional tort;

(3) Breach of contract;

(4) A claim asserted by a host entity or by an entity located in this or another state which employs or uses the services of the practitioner; or

(5) An act or omission relating to the operation of:

(A) A motor vehicle;

(B) A vessel;

(C) An aircraft; or

(D) Other vehicle.

(d) A person that, pursuant to this chapter, operates, uses, or relies upon information provided by a registration system is not liable for damages for an act or omission relating to that operation, use, or reliance unless the act or omission is an intentional tort or is willful misconduct or wanton, grossly negligent, reckless, or criminal conduct.

(e) In authorizing health services under this chapter, the District of Columbia has no liability for the act or omission of the volunteer health practitioner.

(July 1, 2010, D.C. Law 18-184, § 11, 57 DCR 3655.)

Legislative history of Law 18-184. — For Law 18-184, see notes following § 7-2361.01.

Editor's notes. — Uniform Law: This sec-

tion is based upon § 11 of the Uniform Emergency Volunteer Health Practitioners Act.

§ 7-2361.11. Workers' compensation coverage.

Notwithstanding subchapter XXIII of Chapter 6 of Title 1 [§ 1-623.01 et seq.], a volunteer health practitioner who is providing health services in the

District pursuant to this chapter, or who is traveling to or from the District to provide such services, and who is not covered by workers' compensation insurance, shall be considered an employee of the District government for purposes of any medical workers' compensation benefits concerning any injury incurred in traveling or providing the services. Benefits for volunteer health practitioners are limited to those medical benefits provided to District government employees under § 1-623.03. If a practitioner is a participant or beneficiary of a health benefits plan or similar plan, the medical benefits under that plan are primary to the medical benefits under this section, and medical benefits under this section are reduced by the benefits under that plan.

(July 1, 2010, D.C. Law 18-184, § 12, 57 DCR 3655.)

Legislative history of Law 18-184. — For Law 18-184, see notes following § 7-2361.01.

Editor's notes. — Uniform Law: This sec-

tion is based upon § 12 of the Uniform Emergency Volunteer Health Practitioners Act.

§ 7-2361.12. Uniformity of application and construction.

In applying and construing this chapter, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

(July 1, 2010, D.C. Law 18-184, § 13, 57 DCR 3655.)

Legislative history of Law 18-184. — For Law 18-184, see notes following § 7-2361.01.

Editor's notes. — Uniform Law: This sec-

tion is based upon § 13 of the Uniform Emergency Volunteer Health Practitioners Act.

CHAPTER 24. NUCLEAR WEAPONS FREEZE.

Sec.

7-2401. Declaration of policy.
7-2402, 7-2403. [Repealed].

Sec.

7-2404. Proposal for immediate negotiation.

§ 7-2401. Declaration of policy.

In the interest of preventing nuclear war, reversing the economic impact of weapons spending, and safeguarding District of Columbia residents, and recognizing that civil defense cannot provide protection from nuclear destruction, it is by the electors declared the public policy of the District of Columbia to support:

- (1) A mutual United States-Soviet Union nuclear weapons freeze as a first step toward arms reduction;
- (2) Redirection of resources to job creation and human needs; and
- (3) Avoidance of nuclear war, not futile preparation to withstand nuclear attack.

(Mar. 17, 1983, D.C. Law 4-210, § 2, 30 DCR 1088.)

Prior Codifications. — 1981 Ed., § 6-1511.

Legislative history of Law 4-210. — Law 4-210, the “Nuclear Weapons Freeze Act of 1982,” was submitted to the electors of the District of Columbia on November 2, 1982, as Initiative No. 10. The results of the voting, certified by the Board of Elections and Ethics on November 10, 1982, were 80,766 for the Initiative and 34,926 against the Initiative. It was transmitted to Congress on February 1,

1983, published in the D.C. Register on March 11, 1983, and became law on March 17, 1983.

Editor’s notes. — Nuclear Test Ban Support: Pursuant to Resolution 6-656, the “Nuclear Test Ban Support Resolution of 1986,” effective May 13, 1986, the Council expressed support for a mutual and verifiable ban of nuclear testing as a first step towards freezing and reversing the arms race between the United States and the Soviet Union.

§ 7-2402. Establishment of Advisory Board. [Repealed].

Repealed.

(Mar. 17, 1983, D.C. Law 4-210, § 3, 30 DCR 1088; Apr. 29, 1998, D.C. Law 12-86, § 401(g), 45 DCR 1172.)

Prior Codifications. — 1981 Ed., § 6-1512.

Legislative history of Law 4-210. — For legislative history of D.C. Law 4-210, see Historical and Statutory Notes following § 7-2401.

Legislative history of Law 12-86. — Law 12-86, the “Omnibus Regulatory Reform Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-458, which was referred to the Committee on Public Works

and the Environment and the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 19, 1997, and January 6, 1998, respectively. Signed by the Mayor on January 21, 1998, it was assigned Act No. 12-256 and transmitted to both Houses of Congress for its review. D.C. Law 12-86 became effective on April 29, 1998.

§ 7-2403. Duties of Advisory Board. [Repealed].

Repealed.

(Mar. 17, 1983, D.C. Law 4-210, § 4, 30 DCR 1088; Apr. 29, 1998, D.C. Law 12-86, § 401(g), 45 DCR 1172.)

Prior Codifications. — 1981 Ed., § 6-1513.

Legislative history of Law 4-210. — For legislative history of D.C. Law 4-210, see Historical and Statutory Notes following § 7-2401.

Legislative history of Law 12-86. — For legislative history of D.C. Law 12-86, see Historical and Statutory Notes following § 7-2402.

§ 7-2404. Proposal for immediate negotiation.

Within 30 days of March 17, 1983, the Mayor shall propose to Congress, the Secretary of Defense, the Secretary of State, and the President the immediate negotiation with the Soviet Union of a permanent, mutual freeze on the testing, production, and further deployment of all nuclear weapons and their delivery systems.

(Mar. 17, 1983, D.C. Law 4-210, § 5, 30 DCR 1088.)

Cross references. — Prisons, privately operated facilities, authority to register firearms, see § 24-261.02.

Prior Codifications. — 1981 Ed., § 6-1514.

Legislative history of Law 4-210. — For legislative history of D.C. Law 4-210, see Historical and Statutory Notes following § 7-2401.

Legislative history of Law 10-99. — Law 10-99, the “Nuclear Disarmament and Economic Conversion Constitutional Amendment Proposal Act of 1992,” was submitted to the electors of the District of Columbia on September 14, 1993, as Initiative No. 37. The results of the voting, certified by the Board of Elections and Ethics on September 27, 1993, were 41,702 for the Initiative and 32,422 against the Initiative. It was transmitted to both Houses of Congress for its review on February 25, 1994.

Editor’s notes. — Initiative 37, D.C. Law 10-99: D.C. Law 10-99 was enacted by the

electors of the District of Columbia in Initiative Measure 37.

Section 1 of D.C. Law 10-99 requires the Mayor to notify the District’s Congressional Delegate, in writing, that a majority of District voters request that the Delegate propose a Constitutional amendment directing the U.S. government to: 1) abolish all nuclear warheads by the year 2000; 2) pursue a good faith effort to eliminate war, armed conflict, and military operations; 3) actively promote international peace and nuclear disarmament; and 4) convert weapons industries into constructive, ecologically beneficial peacetime industries and to redirect those resources to meet human needs, including housing, health care, agriculture, education, and environment.

Section 2 of D.C. Law 10-99 provided for severability of the act.

HUMAN HEALTH CARE AND SAFETY

CHAPTER 25. FIREARMS CONTROL.

UNIT A. FIREARMS CONTROL REGULATIONS

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7-2501.01. Definitions.

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7-2502.03. Qualifications for registration; information required for registration.

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7-2502.05. Application signed under oath; fees.

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7-2502.08. Duties of registrants.

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7-2504.04. Duties of licensed dealers; records required.

7-2504.05. Revocation of dealer's license.

7-2504.06. Procedure for denial and revocation of dealer's license.

7-2504.07. Display of firearms or ammunition by dealers; security; employees of dealers.

7-2504.08. Identification number on firearm required before sale.

Sec.

7-2504.09. Certain information obtained from or retained by dealers not to be used as evidence in criminal proceedings.

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UNIT B. STRICT LIABILITY FOR ILLEGAL SALE AND
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Sec.

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Unit A. Firearms Control Regulations.

*Subchapter I. Definitions.***§ 7-2501.01. Definitions.**

As used in this unit the term:

(1) “Acts of Congress” means:

(A) Chapter 45 of Title 22;

(B) Omnibus Crime Control and Safe Streets Act of 1968, as amended (title VII, Unlawful Possession or Receipt of Firearms (82 Stat. 1236; 18 U.S.C. Appendix)); and

(C) An Act to Amend Title 18, United States Code, To Provide for Better Control of the Interstate Traffic in Firearms Act of 1968 (82 Stat. 1213; 18 U.S.C. § 921 et seq.).

(2) “Ammunition” means cartridge cases, shells, projectiles (including shot), primers, bullets (including restricted pistol bullets), propellant powder, or other devices or materials designed, redesigned, or intended for use in a firearm or destructive device.

(3) “Antique firearm” means:

(A) Any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; and

(B) Any replica of any firearm described in subparagraph (A) if such replica:

(i) Is not designed or redesigned for using rim-fire or conventional center-fire fixed ammunition; or

(ii) Uses rim-fire or conventional ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

(3A)(A) “Assault weapon” means:

(i) The following semiautomatic firearms:

(I) All of the following specified rifles:

(aa) All AK series including, but not limited to, the models identified as follows:

(1) Made in China AK, AKM, AKS, AK47, AK47S, 56, 56S, 84S, and 86S;

(2) Norinco (all models);

(3) Poly Technologies (all models);

(4) MAADI AK47 and ARM; and

- (5) Mitchell (all models).
- (bb) UZI and Galil;
- (cc) Beretta AR-70;
- (dd) CETME Sporter;
- (ee) Colt AR-15 series;
- (ff) Daewoo K-1, K-2, Max 1, Max 2, AR 100, and AR110 C;
- (gg) Fabrique Nationale FAL, LAR, FNC, 308 Match, and Sporter;
- (hh) MAS 223.
- (ii) HK-91, HK-93, HK-94, and HK-PSG-1;
- (jj) The following MAC types:
 - (1) RPB Industries Inc. sM10 and sM11; and
 - (2) SWD Incorporated M11;
- (kk) SKS with detachable magazine;
- (ll) SIG AMT, PE-57, SG 550, and SG 551;
- (mm) Springfield Armory BM59 and SAR-48;
- (nn) Sterling MK-6;
- (oo) Steyer AUG, Steyr AUG;
- (pp) Valmet M62S, M71S, and M78S;
- (qq) Armalite AR-180;
- (rr) Bushmaster Assault Rifle;
- (ss) Calico —900;
- (tt) J&R ENG —68; and
- (uu) Weaver Arms Nighthawk.
- (II) All of the following specified pistols:
 - (aa) UZI;
 - (bb) Encom MP-9 and MP-45;
 - (cc) The following MAC types:
 - (1) RPB Industries Inc. sM10 and sM11;
 - (2) SWD Incorporated -11;
 - (3) Advance Armament Inc. —11; and
 - (4) Military Armament Corp. Ingram M-11;
 - (dd) Intratec TEC-9 and TEC-DC9;
 - (ee) Sites Spectre;
 - (ff) Sterling MK-7;
 - (gg) Calico M-950; and
 - (hh) Bushmaster Pistol.
- (III) All of the following specified shotguns:
 - (aa) Franchi SPAS 12 and LAW 12; and
 - (bb) Striker 12. The Streetsweeper type S/S Inc. SS₁₂;
- (IV) A semiautomatic, rifle that has the capacity to accept a detachable magazine and any one of the following:
 - (aa) A pistol grip that protrudes conspicuously beneath the action of the weapon;
 - (bb) A thumbhole stock;
 - (cc) A folding or telescoping stock;
 - (dd) A grenade launcher or flare launcher;

(ee) A flash suppressor; or

(ff) A forward pistol grip;

(V) A semiautomatic pistol that has the capacity to accept a detachable magazine and any one of the following:

(aa) A threaded barrel, capable of accepting a flash suppressor, forward handgrip, or silencer;

(bb) A second handgrip;

(cc) A shroud that is attached to, or partially or completely encircles, the barrel that allows the bearer to fire the weapon without burning his or her hand, except a slide that encloses the barrel; or

(dd) The capacity to accept a detachable magazine at some location outside of the pistol grip;

(VI) A semiautomatic shotgun that has one or more of the following:

(aa) A folding or telescoping stock;

(bb) A pistol grip that protrudes conspicuously beneath the action of the weapon;

(cc) A thumbhole stock; or

(dd) A vertical handgrip; and

(VII) A semiautomatic shotgun that has the ability to accept a detachable magazine; and

(VIII) All other models within a series that are variations, with minor differences, of those models listed in subparagraph (A) of this paragraph, regardless of the manufacturer;

(ii) Any shotgun with a revolving cylinder; provided, that this subparagraph shall not apply to a weapon with an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition; and

(iii) Any firearm that the Chief may designate as an assault weapon by rule, based on a determination that the firearm would reasonably pose the same or similar danger to the health, safety, and security of the residents of the District as those weapons enumerated in this paragraph.

(B) The term "assault weapon" shall not include:

(i) Any antique firearm; or

(ii) Any of the following pistols, which are designed expressly for use in Olympic target shooting events, sanctioned by the International Olympic Committee and by USA Shooting, the national governing body for international shooting competition in the United States, and used for Olympic target shooting purposes:

| MANUFACTURER | MODEL | CALIBER |
|--------------|-------|--------------|
| BENELLI | MP90 | .22LR |
| BENELLI | MP90 | .32 S&W LONG |
| BENELLI | MP95 | .22LR |
| BENELLI | MP95 | .32 S&W LONG |
| HAMMERLI | 280 | .22LR |
| HAMMERLI | 280 | .32 S&W LONG |

| MANUFACTURER | MODEL | CALIBER |
|--------------|-------------|--------------|
| HAMMERLI | SP20 | .22LR |
| HAMMERLI | SP20 | .32 S&W LONG |
| PARDINI | GPO | .22 SHORT |
| PARDINI | GP-SCHUMANN | .22 SHORT |
| PARDINI | HP | .32 S&W LONG |
| PARDINI | MP | .32 S&W LONG |
| PARDINI | SP | .22LR |
| PARDINI | SPE | .22LR |
| WALTHER | GSP | .22LR |
| WALTHER | GSP | .32 S&W LONG |
| WALTHER | OSP | .22 SHORT |
| WALTHER | OSP-2000 | .22 SHORT |

(C) The Chief may exempt, by rule, new models of competitive pistols that would otherwise fall within the definition of “assault weapon” pursuant to this section from being classified as an assault weapon. The exemption of competitive pistols shall be based either on recommendations by USA Shooting consistent with the regulations contained in the USA Shooting Official Rules or on the recommendation or rules of any other organization that the Chief considers relevant.

(4) “Chief” means the Chief of Police of the Metropolitan Police Department of the District of Columbia or his designated agent.

(5) “Crime of violence” means a crime of violence as defined in § 22-4501, committed in any jurisdiction, but does not include larceny or attempted larceny.

(6) “Dealer’s license” means a license to buy or sell, repair, trade, or otherwise deal in firearms, destructive devices, or ammunition as provided for in subchapter IV of this unit.

(7) “Destructive device” means:

(A) An explosive, incendiary, or poison gas bomb, grenade, rocket, missile, mine, or similar device;

(B) Any device by whatever name known which will, or is designed or redesigned, or may be readily converted or restored to expel a projectile by the action of an explosive or other propellant through a smooth bore barrel, except a shotgun;

(C) Any device containing tear gas or a chemically similar lacrimator or sternutator by whatever name known;

(D) Any device designed or redesigned, made or remade, or readily converted or restored, and intended to stun or disable a person by means of electric shock;

(E) Any combination of parts designed or intended for use in converting any device into any destructive device; or from which a destructive device may be readily assembled; provided, that the term shall not include:

(i) Any pneumatic, spring, or B-B gun which expels a single projectile not exceeding .18 inch in diameter;

(ii) Any device which is neither designed nor redesigned for use as a weapon;

(iii) Any device originally a weapon which has been redesigned for use as a signaling, line throwing, or safety device; or

(iv) Any device which the Chief finds is not likely to be used as a weapon.

(8) "District" means District of Columbia.

(8A) ".50 BMG rifle" means:

(A) A rifle capable of firing a center-fire cartridge in .50 BMG caliber, including a 12.7 mm equivalent of .50 BMG and any other metric equivalent; or

(B) A copy or duplicate of any rifle described in subparagraph (A) of this paragraph, or any other rifle developed and manufactured after January 6, 2009, regardless of caliber, if such rifle is capable of firing a projectile that attains a muzzle energy of 12,000 foot-pounds or greater in any combination of bullet, propellant, case, or primer.

(9) "Firearm" means any weapon, regardless of operability, which will, or is designed or redesigned, made or remade, readily converted, restored, or repaired, or is intended to, expel a projectile or projectiles by the action of an explosive; the frame or receiver of any such device; or any firearm muffler or silencer; provided, that such term shall not include:

(A) Antique firearms; or

(B) Destructive devices;

(C) Any device used exclusively for line throwing, signaling, or safety, and required or recommended by the Coast Guard or Interstate Commerce Commission; or

(D) Any device used exclusively for firing explosive rivets, stud cartridges, or similar industrial ammunition and incapable for use as a weapon.

(9A) "Intrafamily offense" shall have the same meaning as provided in § 16-1001(8).

(10) "Machine gun" means any firearm which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term "machine gun" shall also include the frame or receiver of any such firearm, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a firearm into a machine gun, and any combination of parts from which a machine gun can be assembled if such parts are in the possession or under the control of a person.

(11) "Organization" means any partnership, company, corporation, or other business entity, or any group or association of 2 or more persons united for a common purpose.

(12) "Pistol" means any firearm originally designed to be fired by use of a single hand or with a barrel less than 12 inches in length.

(12A) "Place of business" means a business that is located in an immovable structure at a fixed location and that is operated and owned entirely, or in substantial part, by the firearm registrant.

(13) "Registration certificate" means a certificate validly issued pursuant to this unit evincing the registration of a firearm pursuant to this unit.

(13A) "Restricted pistol bullet" means any bullet designed for use in a pistol which, when fired from a pistol with a barrel of 5 inches or less in length,

is capable of penetrating commercially available body armor with a penetration resistance equal to or greater than that of 18 layers of kevlar.

(14) "Rifle" means a grooved bore firearm using a fixed metallic cartridge with a single projectile and designed or redesigned, made or remade, and intended to be fired from the shoulder.

(15) "Sawed-off shotgun" means a shotgun having a barrel of less than 18 inches in length; or a firearm made from a shotgun if such firearm as modified has an overall length of less than 26 inches or any barrel of less than 18 inches in length.

(16) "Shotgun" means a smooth bore firearm using a fixed shotgun shell with either a number of ball shot or a single projectile, and designed or redesigned, made or remade, and intended to be fired from the shoulder.

(17) "Short barreled rifle" means a rifle having any barrel less than 16 inches in length, or a firearm made from a rifle if such firearm as modified has an overall length of less than 26 inches or any barrel of less than 16 inches.

(18) "Weapons offense" means any violation in any jurisdiction of any law which involves the sale, purchase, transfer in any manner, receipt, acquisition, possession, having under control, use, repair, manufacture, carrying, or transportation of any firearm, ammunition, or destructive device.

(Sept. 24, 1976, D.C. Law 1-85, title I, § 101, 23 DCR 2464; Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780; Aug. 2, 1983, D.C. Law 5-19, § 2, 30 DCR 3328; Mar. 31, 2009, D.C. Law 17-372, § 3(a), 56 DCR 1365.)

Section references. — This section is referred to in §§ 7-2502.13, 7-2507.06a, 7-2531.01, 7-2551.01, and 16-2301.

Prior Codifications. — 1981 Ed., § 6-2302. 1973 Ed., § 6-1802.

Effect of amendments. — D.C. Law 17-372 added pars. (3A), (8A), (9A), and (12A); in par. (9), substituted "any weapon, regardless of operability, which will, or is designed or redesigned, made or remade, readily converted, restored, or repaired, or is intended to," for "any weapon which will, or is designed or redesigned, made or remade, readily converted or restored, and intended to,"; rewrote par. (10); in par. (12), substituted "hand or with a barrel less than 12 inches in length" for "hand"; and, in par. (15), substituted "18 inches in length" for "20 inches in length" in two places. Prior to amendment, par. (10) read as follows: "(10) 'Machine gun' means any firearm which shoots, is designed to shoot, or can be readily converted or restored to shoot: (A) Automatically, more than 1 shot by a single function of the trigger; (B) Semiautomatically, more than 12 shots without manual reloading."

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(a) of Second Firearms Control Emergency Amendment Act of 2008 (D.C. Act 17-502, September 16, 2008, 55 DCR 9904).

For temporary (90 day) amendment of section, see § 2(a) of Second Firearms Control

Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-601, December 12, 2008, 56 DCR 9).

For temporary (90 day) amendment of section, see § 3(a) of Firearms Registration Emergency Amendment Act of 2008 (D.C. Act 17-651, January 6, 2009, 56 DCR 911).

For temporary (90 day) amendment of section, see § 2(a) of Firearms Emergency Amendment Act of 2012 (D.C. Act 19-352, May 11, 2012, 59 DCR 5116).

For temporary (90 day) amendment of section, see § 2(a) of the Firearms Amendments Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-394, July 18, 2012, 59 DCR 8694).

Legislative history of Law 1-85. — Law 1-85, the 'Firearms Control Regulations Act of 1975,' was introduced in Council and assigned Bill No. 1-164, which was referred to the Committee on the Judiciary and the Committee on Criminal Law. The Bill was adopted on first, amended first, and second readings, and reconsideration of second reading, on May 3, 1976, May 18, 1976, June 15, 1976, and June 29, 1976, respectively. Signed by the Mayor on July 23, 1976, it was assigned Act No. 1-142 and transmitted to both Houses of Congress for review

Legislative history of Law 2-62. — Law 2-62, the "Firearms Control Regulations Act Technical Amendments Act of 1977," was intro-

duced in Council and assigned Bill No. 2-194, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on October 11, 1977 and October 25, 1977, respectively. Signed by the Mayor on January 3, 1978, it was assigned Act No. 2-129 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-19. — Law 5-19, the “Firearms Control Regulations Act of 1975 Amendments Act of 1983,” was introduced in Council and assigned Bill No. 5-110, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 24, 1983 and June 7, 1983, respectively. Signed by the Mayor on June 9, 1983, it was assigned Act No. 5-36 and transmitted to both Houses of Congress for its review.

Legislative history of Law 17-372. — Law 17-372, the “Firearms Control Amendment Act of 2008”, was introduced in Council and assigned Bill No. 17-843 which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on December 2, 2008, and December 16, 2008, respectively. Signed by the Mayor on January 28, 2009, it was assigned Act No. 17-708 and transmitted to both Houses of Congress for its review. D.C. Law 17-372 became effective on March 31, 2009.

References in text. — “An Act to Amend Title 18, United States Code, to Provide for Better Control of the Interstate Traffic in Firearms Act of 1968,” referred to in subparagraph (C) of paragraph (1), is the Gun Control Act of 1968, Pub. L. 90-618.

CASE NOTES

ANALYSIS

Ammunition.
Dominion and control.
Firearm.
Machine gun.
Operability.
Shotgun.

Ammunition.

In prosecution for unlawful possession of ammunition, Government is required to prove only that defendants possessed ammunition as defined by Code to establish essential element of offense. D.C. Code 1981, § 6-2361. *Logan v. United States*, 489 A.2d 485, 1985 D.C. App. LEXIS 346 (1985).

Dominion and control.

Evidence of proximity is sufficient to permit jury to infer that defendants had convenient access and thus “dominion and control” over guns. D.C. Code 1981, §§ 6-2311, 22-3204. *Logan v. United States*, 489 A.2d 485, 1985 D.C. App. LEXIS 346 (1985).

Firearm.

Finding that robbery defendant was armed with “firearm or imitation firearm” was supported by eyewitness testimony; despite witness’ lack of familiarity with handguns, she insisted that silver object she saw in defendant’s hand was gun. D.C. Code 1981, §§ 22-3202, 22-3204(b). *Bates v. United States*, 619 A.2d 984, 1993 D.C. App. LEXIS 23 (1993).

Machine gun.

Semiautomatic pistol capable of firing 13 consecutive shots without reloading when equipped with properly functioning magazine was “machine gun,” within meaning of statute

outlawing its possession, even though defendant’s magazine was defective and did not automatically reload weapon. D.C. Code 1981, §§ 22-3201(c), 22-3214(a). *United States v. Woodfolk*, 656 A.2d 1145, 1995 D.C. App. LEXIS 77 (1995), writ of certiorari denied by 516 U.S. 1183, 116 S. Ct. 1286, 134 L. Ed. 2d 231, 1996 U.S. LEXIS 1934, 64 U.S.L.W. 3624 (1996).

Operability.

Statute that prohibits possession of unregistered firearms is not limited to firearms that are operable; statute clearly includes within its scope inoperable weapons that may be redesigned, remade or readily converted or restored to operability. D.C. Code 1981, § 6-2311(a). *Townsend v. United States*, 559 A.2d 1319, 1989 D.C. App. LEXIS 114 (1989).

Evidence in prosecution for possession of prohibited weapon was sufficient to permit jury to find that sawed-off shotgun allegedly possessed by defendant was “operable.” D.C. Code 1981, §§ 22-3201, 22-3214(a), 22-3215a. *Washington v. United States*, 498 A.2d 247, 1985 D.C. App. LEXIS 491 (1985).

Circumstantial evidence may support finding of “operability” of shotgun for purposes of statute prohibiting possession of shotgun with barrel less than 20 inches long. D.C. Code 1981, §§ 22-3201, 22-3214(a). *Washington v. United States*, 498 A.2d 247, 1985 D.C. App. LEXIS 491 (1985).

Shotgun.

To prove that item is “shotgun” for purposes of statute prohibiting possession of shotgun with barrel less than 20 inches long, [D.C. Code 1981, § 22-3214], Government must prove that it is “operable.” D.C. Code 1981, § 22-3214(a). *Washington v. United States*, 498 A.2d 247, 1985 D.C. App. LEXIS 491 (1985).

Subchapter II. Firearms and Destructive Devices.

§ 7-2502.01. Registration requirements.

(a) Except as otherwise provided in this unit, no person or organization in the District of Columbia ("District") shall receive, possess, control, transfer, offer for sale, sell, give, or deliver any destructive device, and no person or organization in the District shall possess or control any firearm, unless the person or organization holds a valid registration certificate for the firearm. A registration certificate may be issued:

(1) To an organization if:

(A) The organization employs at least 1 commissioned special police officer or employee licensed to carry a firearm whom the organization arms during the employee's duty hours; and

(B) The registration is issued in the name of the organization and in the name of the president or chief executive officer of the organization;

(2) In the discretion of the Chief of Police, to a police officer who has retired from the Metropolitan Police Department; or

(3) In the discretion of the Chief of Police, to the Fire Marshal and any member of the Fire and Arson Investigation Unit of the Fire Prevention Bureau of the Fire Department of the District of Columbia, who is designated in writing by the Fire Chief, for the purpose of enforcing the arson and fire safety laws of the District of Columbia.

(b) Subsection (a) of this section shall not apply to:

(1) Any law enforcement officer or agent of the District or the United States, or any law enforcement officer or agent of the government of any state or subdivision thereof, or any member of the armed forces of the United States, the National Guard or organized reserves, when such officer, agent, or member is authorized to possess such a firearm or device while on duty in the performance of official authorized functions;

(2) Any person holding a dealer's license; provided, that the firearm or destructive device is:

(A) Acquired by such person in the normal conduct of business;

(B) Kept at the place described in the dealer's license; and

(C) Not kept for such person's private use or protection, or for the protection of his business;

(3) With respect to firearms, any nonresident of the District participating in any lawful recreational firearm-related activity in the District, or on his way to or from such activity in another jurisdiction; provided, that such person, whenever in possession of a firearm, shall upon demand of any member of the Metropolitan Police Department, or other bona fide law enforcement officer, exhibit proof that he is on his way to or from such activity, and that his possession or control of such firearm is lawful in the jurisdiction in which he resides; provided further, that such weapon shall be transported in accordance with § 22-4504.02; or

(4) Any person who temporarily possesses a firearm registered to another person while in the home of the registrant; provided, that the person is not

otherwise prohibited from possessing firearms and the person reasonably believes that possession of the firearm is necessary to prevent imminent death or great bodily harm to himself or herself.

(Sept. 24, 1976, D.C. Law 1-85, title II, § 201, 23 DCR 2464; May 7, 1993, D.C. Law 9-266, § 2(a), 39 DCR 5676; Mar. 26, 1999, D.C. Law 12-176, § 5, 45 DCR 5662; Apr. 20, 1999, D.C. Law 12-264, § 19, 46 DCR 2118; Mar. 31, 2009, D.C. Law 17-372, § 3(b), 56 DCR 1365.)

Section references. — This section is referred to in §§ 7-2504.01 and 7-2507.02.

Prior Codifications. — 1981 Ed., § 6-2311. 1973 Ed., § 6-1811.

Effect of amendments. — D.C. Law 17-372, in subsec. (b)(3), substituted “that such weapon shall be transported in accordance with § 22-4504.02; or” for “that such weapon shall be unloaded, securely wrapped, and carried in open view”; and added subsec. (b)(4).

Emergency legislation. — For temporary authorization for seizure and forfeiture of firearms under certain circumstances, see § 2(b) of the Zero Tolerance for Guns Emergency Amendment Act of 1996 (D.C. Act 11-390, August 26, 1996, 43 DCR 4986).

For temporary amendment of section, see § 5 of the Arson Investigators Emergency Amendment Act of 1998 (D.C. Act 12-406, July 13, 1998, 45 DCR 4833), § 5 of the Arson Investigators Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-466, October 28, 1998, 45 DCR 7838), and § 5 of the Arson Investigators Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-539, December 24, 1998, 45 DCR 297).

For temporary (90 day) amendment of section, see § 3(b) of Firearms Registration Emergency Amendment Act of 2008 (D.C. Act 17-651, January 6, 2009, 56 DCR 911).

For temporary (90 day) amendment of section, see § 2(b) of Firearms Emergency Amendment Act of 2012 (D.C. Act 19-352, May 11, 2012, 59 DCR 5116).

For temporary (90 day) amendment of section, see § 2(b) of the Firearms Amendments Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-394, July 18, 2012, 59 DCR 8694).

Legislative history of Law 1-85. — Law 1-85, the “Firearms Control Regulations Act of 1975,” was introduced in Council and assigned Bill No. 1-164, which was referred to the Committee on the Judiciary and the Committee on Criminal Law. The Bill was adopted on first, amended first, and second readings, and reconsideration of second reading, on May 3, 1976, May 18, 1976, June 15, 1976, and June 29, 1976, respectively. Signed by the Mayor on July 23, 1976, it was assigned Act No. 1-142 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-266. — Law 9-266, the “Handgun Possession Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-91 which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 2, 1992, and July 7, 1992, respectively. Signed by the Mayor on July 21, 1992, it was assigned Act No. 9-247 and transmitted to both Houses of Congress for its review. D.C. Law 9-266 became effective on May 7, 1993.

Legislative history of Law 12-176. — Law 12-176, the “Arson Investigators Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-485, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on May 5, 1998, and June 2, 1998, respectively. Signed by the Mayor on July 20, 1998, it was assigned Act No. 12-418 and transmitted to both Houses of Congress for its review. D.C. Law 12-176 became effective on March 26, 1999.

Legislative history of Law 12-264. — Law 12-264, the “Technical Amendments Act of 1998,” was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

Legislative history of Law 17-372. — For Law 17-372, see notes following § 7-2501.01.

Editor’s notes. — Employees of United States Department of Agriculture authorized to carry firearms: Public Law 97-312 provided that any employee of the United States Department of Agriculture designated by the Secretary of Agriculture and the Attorney General of the United States may carry a firearm and use a firearm when necessary for self-protection, in accordance with rules and regulations issued by the Secretary of Agriculture and the Attorney General of the United States, while such employee is engaged in the performance of the employee’s official duties to (1) carry out any law or regulation related to the control, eradication, or prevention of the introduction or dissemination of communicable disease of live-

stock or poultry into the United States or (2) perform any duty related to such disease control, eradication, or prevention, subject to the direction of the Secretary.

Seizure and forfeiture of conveyances used in firearms offenses: Section 2(b) of D.C. Law 11-273 provided for the forfeiture and seizure of

any conveyance, including vehicles and vessels in which any person or persons transport, possess, or conceal any firearm as defined in § 7-2501.01, or in any manner use to facilitate a violation of §§ 22-4503 and 22-4504. D.C. Law 11-273 became effective on June 3, 1997.

CASE NOTES

ANALYSIS

Admissibility of evidence.
Aiding and abetting.
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Because unauthorized possession of ammunition is offense in District of Columbia, and possession of rifle clip may be offense, testimony concerning drug defendant's alleged possession of those items implicated rule dealing with evidence of other crimes. Fed.Rules Evid.Rule 404(b), 18 U.S.C.; D.C. Code 1981, §§ 6-2302(2, 9), 6-2311, 6-2361. *United States v. Ruffin*, 40 F.3d 1296, 1994 U.S. App. LEXIS 34342 (C.A.D.C. 1994), writ of certiorari denied by 514 U.S. 1074, 115 S. Ct. 1716, 131 L. Ed. 2d 575, 1995 U.S. LEXIS 2785, 63 U.S.L.W. 3754 (1995).

Defense counsel was entitled, under rule of completeness, to question arresting officer regarding statements defendant made to officer at time of arrest, in order to refute other officer's testimony that defendant had not mentioned having a permit for gun, in prosecution for weapon and drug offenses; government's theory of case was that defendant had kept gun in car to protect marijuana in trunk, but defendant's innocent explanation for why gun was in car tended to undermine that theory and thus was highly relevant to the defense, not only for refuting intent element of gun and ammunition offenses, but also for rebutting defendant's alleged awareness of marijuana in the trunk. *Cox v. United States*, 898 A.2d 376, 2006 D.C. App. LEXIS 207 (2006).

Fact that defendant was wearing bullet-proof vest when arrested, combined with testimony that officers saw defendant with a gun, defen-

dant's flight through alley, and location of gun in defendant's path of flight, was relevant to whether defendant also possessed machine gun. D.C. Code 1981, §§ 6-2311(a), 22-3204(a), 22-3214(a). *Jones v. United States*, 739 A.2d 348, 1999 D.C. App. LEXIS 217 (1999).

Probative value of evidence of bullet-proof vest that defendant was wearing when arrested following chase through alley outweighed any danger that it would improperly sway jury's deliberations, and thus, evidence of vest was admissible in prosecution for various weapons-related offenses including possession of prohibited weapon. D.C. Code 1981, §§ 6-2311(a), 6-2361, 22-3204(a), 22-3214(a). *Jones v. United States*, 739 A.2d 348, 1999 D.C. App. LEXIS 217 (1999).

Trial court did not abuse its discretion in curtailing scope of defendant's cross-examination of arresting officer regarding personnel regulations and practices, in prosecution for carrying pistol without license, possession of unregistered firearm, unlawful possession of ammunition, possession of phencyclidine and possession of marijuana; defendant proffered no facts or follow-up questions which would have supported theory that officer's own personnel record was such that he had any incentive to misrepresent circumstances justifying arrest. D.C. Code 1981, §§ 6-2311(a), 6-2361(3), 22-3204, 33-541(d). *Deneal v. United States*, 551 A.2d 1312, 1988 D.C. App. LEXIS 219 (1988).

Aiding and abetting.

Instruction that stated that an aider and abettor is legally responsible for the acts of other persons that are the "natural and probable consequence" of the crime in which he intentionally participates was not plain error in armed robbery (AR) prosecution, even though "natural and probable consequence" language in the aiding and abetting instruction had been rejected since defendant's trial, as defendant could not demonstrate that his substantial rights were affected, in light of overwhelming evidence that defendant was an active participant in the robbery. *Little v. United States*, 989 A.2d 1096, 2010 D.C. App. LEXIS 82 (2010).

Defendant could not be held guilty as aider and abettor on weapons charges arising when companion, with whom defendant was walking

down the street after exiting the vehicle about which officers sought to question them, placed handgun on ground near vehicle while defendant stood with his back to companion; defendant could not have acted as shield to block view of approaching officers from his position and could not have been acting as lookout, since both he and companion were already aware that officers were approaching; thus, defendant could not be held liable on theory that he assisted companion in possessing and disposing of gun. D.C. Code 1981, §§ 6-2311(a), 22-3204. In re L.A.V., 578 A.2d 708, 1990 D.C. App. LEXIS 215 (1990).

Construction and application.

Substantial relationship or reasonable “fit” existed between prohibition in Firearms Registration Amendment Act on assault weapons and magazines holding more than ten rounds and important interests of District of Columbia in protecting police officers and controlling crime, and thus prohibition passed muster under Second Amendment through intermediate scrutiny, since evidence demonstrated that ban on assault weapons was likely to promote government’s interest in crime control in densely populated urban area that was District of Columbia and evidence demonstrated that large-capacity magazines tended to pose danger to innocent people and particularly to police officers. *Heller v. District of Columbia*, 670 F.3d 1244, 2011 U.S. App. LEXIS 20130 (C.A.D.C. 2011).

Intermediate scrutiny, rather than strict scrutiny, applied to determination of whether registration requirements in Firearms Registration Amendment Act impinged upon Second Amendment right, since Act’s registration requirements did not prevent individual from possessing firearm in his home or elsewhere, whether for self-defense or hunting, or any other lawful purpose. *Heller v. District of Columbia*, 670 F.3d 1244, 2011 U.S. App. LEXIS 20130 (C.A.D.C. 2011).

Because provisions of statutes governing offenses of possession of an unregistered firearm (UF) and unlawful possession of ammunition (UA) are “police or municipal ordinances or regulations,” prosecutorial authority lies with the Office of the Attorney General of the District of Columbia (OAG), rather than Office of the United States Attorney (USAO), irrespective of fact that violation of provisions carries a maximum penalty of both a fine and imprisonment. In re Prosecution of Hall, 31 A.3d 453, 2011 D.C. App. LEXIS 626 (2011).

Special conservator of the peace seeking preliminary injunction to enjoin the District of Columbia from arresting and prosecuting him for violating its firearms laws failed to show that he had substantial likelihood of success on merits of § 1983 claim that the District would

violate his Fourth Amendment rights by arresting and prosecuting him for carrying an unregistered firearm in the District, and that he was entitled to carry firearms in the District, under the Law Enforcement Officers Safety Act (LEOSA), as a qualified law enforcement officer and a duly appointed law enforcement officer. *Ord v. District of Columbia*, 417 Fed.Appx. 1, 2011 U.S. App. LEXIS 7017 (C.A.D.C. 2011).

The requirements of subsection (a) of this section are not limited to firearms that are operable. It reaches unregistrable firearms and their ammunition. *United States v. Smith*, 118 WLR 2277 (Super. Ct. 1990).

While the provisions of subsection (b)(1) are not limited to just the time the officer is actually on duty, a plain unambiguous reading of the provision does require that the law enforcement officer be a current law enforcement officer and the conclusion that this exemption does not apply to former District of Columbia or United States law enforcement officers and agents. There is no way the language “while on duty in the performance of official functions” can be construed to exempt persons who are no longer law enforcement officials, who can have no “official functions” once their law enforcement status has terminated. *District of Columbia v. Rowan*, 116 WLR 2353 (Super. Ct. 1988).

It is absolutely clear from this section and §§ 6-2313, 6-2323, 6-2361 and 6-2375 and the language and phrasing of other provisions of the Firearms Control Regulation Act of 1975 that the Act focuses equally, if not more, on the person than on the firearm. This dual emphasis fully comports with the purpose of the Act to freeze the handgun population within the District of Columbia by expanding and strengthening the then preexisting firearm registration standards and to prescribe criminal penalties for the violation of its provisions. *District of Columbia v. Rowan*, 116 WLR 2353 (Super. Ct. 1988).

Constructive possession.

Constructive possession of a weapon and ammunition may be sole or joint. *Carter v. United States*, 957 A.2d 9, 2008 D.C. App. LEXIS 397 (2008).

Constructive possession of weapon requires proof that defendant knew of the weapon’s location, had ability to exercise dominion and control over it, and intended to exercise such dominion and control. D.C. Code 1981, §§ 6-2311(a), 6-2361, 22-3214(a). In re M.I.W., 667 A.2d 573, 1995 D.C. App. LEXIS 225 (1995).

To support conviction based on firearm and ammunition offenses, government was required to prove defendant had actual or constructive possession of firearms, and where defendant was not found in actual possession of firearms, government had to prove that defendant had constructive possession of firearms.

D.C. Code 1981, §§ 6-2311(a), 6-2361(3), 22-3204(a, b). *Taylor v. United States*, 662 A.2d 1368, 1995 D.C. App. LEXIS 151 (1995).

Constructive possession of an unregistered weapon or ammunition requires knowledge of the presence of the weapon or ammunition and the existence of dominion and control over them. D.C. Code 1981, §§ 6-2311, 6-2361, 11-707(a); §§ 22-2202, 22-2205 (repealed). *Easley v. United States*, 482 A.2d 779, 1984 D.C. App. LEXIS 497 (1984).

In general.

Offense of possession of unregistered firearm was not lesser included offense with felon in possession of firearm. 18 U.S.C. § 922(g), (g)(1); D.C. Code 1981, §§ 6-2311, 6-2311(a). *United States v. Wood*, 879 F.2d 927, 1989 U.S. App. LEXIS 10616 (C.A.D.C. 1989).

Employee who kept an unregistered firearm in his office could not be held liable for death of robbery victim killed with employee's firearm, which was stolen during burglary of office, despite employee's violation of District of Columbia's firearm registration statute, since a purpose of preventing crimes by gun thieves was not clearly enough indicated in firearm registration statute to warrant imposition of civil liability for intervening, independent criminal acts of third parties. D.C. Code 1981, § 6-2311(a). *Romero v. National Rifle Asso.*, 749 F.2d 77, 1984 U.S. App. LEXIS 16021 (C.A.D.C. 1984).

Assault defendant who voluntarily turned over weapon to investigating officers was not immune from prosecution for possessing unregistered firearm and unregistered ammunition absent compliance with statutory requirement that weapon be unloaded and securely wrapped in package at time of surrender. D.C. Code 1981, §§ 6-2311(a), 6-2361(3). *Yoon v. United States*, 594 A.2d 1056, 1991 D.C. App. LEXIS 199 (1991), amended by 610 A.2d 1388, 1992 D.C. App. LEXIS 186 (D.C. 1992).

Statute that prohibits possession of unregistered firearms is not limited to firearms that are operable; statute clearly includes within its scope inoperable weapons that may be redesigned, remade or readily converted or restored to operability. D.C. Code 1981, § 6-2311(a). *Townsend v. United States*, 559 A.2d 1319, 1989 D.C. App. LEXIS 114 (1989).

Instructions.

Instruction that stated that an aider and abettor is legally responsible for the acts of other persons that are the "natural and probable consequence" of the crime in which he intentionally participates was not plain error in prosecution for assault with a dangerous weapon (ADW), aggravated assault while armed (AAWA), possession of a firearm during a crime of violence (PFCV), carrying a pistol

without a license (CPWL), possession of an unregistered firearm (UF), and unlawful possession of ammunition (UA), even though "natural and probable consequence" language in the aiding and abetting instruction had been rejected since defendant's trial, as defendant could not demonstrate that his substantial rights were affected, in light of overwhelming evidence that defendant "knowingly and intelligently" participated in the commission of such offenses. *Little v. United States*, 989 A.2d 1096, 2010 D.C. App. LEXIS 82 (2010).

Fundamental unanimity of jury on guilty verdict concerning possession of unregistered firearm was called into question, and the potential for coerciveness clearly existed, when jury foreperson announced initial verdict of the jury and stated that defendant was technically guilty with addendum, in that jury unanimously agreed defendant technically violated the law, but several jurors believed he did not violate it in spirit, and at that point, trial judge was required to ensure that jury carried out its essential role to determine guilt or innocence and not to consider the possibilities of punishment in its deliberations. *Headspeth v. United States*, 910 A.2d 311, 2006 D.C. App. LEXIS 578 (2006).

Record did not support defendant's contention that trial court's jury instruction regarding a carrying a pistol without a license (CPWL) conviction based on a constructive possession theory confused jury; once jury was reinstructed as to actual and constructive possession, after expressing confusion between CPWL and possession of an unregistered firearm, there were no further notes sent to the court indicating any confusion. *Johnson v. United States*, 840 A.2d 1277, 2004 D.C. App. LEXIS 4 (2004).

Exclusion of any reference to defendant's rights, under federal Firearms Owners' Protection Act (FOPA), to transport weapon between two states in which it was lawful to carry weapon so long as weapon was unloaded and inaccessible deprived defendant of instruction on significant part of his theory of case and created erroneous impression that defendant had been engaged in criminal conduct immediately prior to his handing pouch containing loaded pistol to police officer at entrance to Capitol Building, which misleading incriminatory impression about defendant's earlier actions had no probative value whatsoever in prosecution for carrying pistol without a license, possession of unregistered firearm and possession of ammunition for unregistered firearm. 18 U.S.C. § 921 et seq.; D.C. Code 1981, §§ 6-2311, 6-2361, 22-3204. *Bieder v. United States*, 662 A.2d 185, 1995 D.C. App. LEXIS 142 (1995).

Assuming that erroneous refusal to charge jury on significant part of defendant's theory of

the case, consisting of evidence that defendant's prior conduct in transporting unloaded firearm in trunk of his car while traveling from state in which gun was licensed to state in which it was legal for defendant to carry gun was lawful under Firearms Owners' Protection Act (FOPA), was not of constitutional magnitude, error was not harmless in that Court of Appeals could not say with fair assurance, after pondering all that happened without stripping erroneous action from the whole, that judgment convicting defendant of carrying pistol without license, unlawful possession of unregistered firearm, and unlawful possession of ammunition for unregistered firearm was not substantially swayed by the error. 18 U.S.C. § 921 et seq.; D.C. Code 1981, §§ 6-2311, 6-2361, 22-3204. *Bieder v. United States*, 662 A.2d 185, 1995 D.C. App. LEXIS 142 (1995).

In prosecution in which defendant was charged with only one count each of carrying pistol without license and possession of unregistered firearm even though there had been two guns involved, instructions were adequate under plain error standard. D.C. Code 1981, §§ 6-2311(a), 22-3204. *Chapman v. United States*, 493 A.2d 1026, 1985 D.C. App. LEXIS 402 (1985).

Intent.

Carrying pistol without a license, possession of unregistered firearm, and possession of unregistered ammunition are general intent crimes, and no specific intent to use gun (or ammunition) need be proved in order to obtain conviction. D.C. Code 1981, §§ 6-2311, 6-2361, 22-3204. *Bsharah v. United States*, 646 A.2d 993, 1994 D.C. App. LEXIS 143 (1994).

Merged offenses.

Regulations promulgated to implement statutes dealing with carrying a pistol without a license and possession of an unregistered firearm did not result in registration offense being included within license offense such that offenses merged and consecutive sentences could not be imposed without violating double jeopardy clause; registration offense would never be proven when license offense was unless additional evidence was presented showing that pistol had not been registered, and it was possible for pistol to be registered without person being licensed to carry pistol. D.C. Code 1981, §§ 6-2311(a), 22-3204(a); U.S. Const. Amend. 5. *Tyree v. United States*, 629 A.2d 20, 1993 D.C. App. LEXIS 185 (1993).

Convictions for offenses of possession of unregistered firearm and possession of unregistered ammunition did not merge with defendant's conviction for carrying unlicensed pistol, since registration offenses concerned firearm in question while licensing offense related to personal qualifications of particular individual to

carry pistol in district. D.C. Code 1981, §§ 6-2311(a), 6-2361(3), 22-3204. *Irby v. United States*, 585 A.2d 759, 1991 D.C. App. LEXIS 10 (1991).

Pleadings.

Information, which charged defendant with only one count each of carrying pistol without license and possession of unregistered firearm even though there had been two guns involved, was not duplicitous. D.C. Code 1981, §§ 6-2311(a), 22-3204. *Chapman v. United States*, 493 A.2d 1026, 1985 D.C. App. LEXIS 402 (1985).

Possession.

Defendant's ownership of vehicle where pistol was found, his operation of that vehicle, and circumstances showing his knowledge that pistol was in the trunk of the vehicle are sufficient to sustain conviction under this section. *United States v. Duncan*, 115 WLR 2517 (Super. Ct. 1987).

Convictions for carrying a pistol without a license (CPWL), possession of an unregistered firearm (UF), and unlawful possession of ammunition (UA) did not constitute plain error, despite argument that the convictions were in violation of the Second Amendment as construed by the United States Supreme Court in *District of Columbia v. Heller*, in which the Supreme Court held that the Second Amendment forbade an absolute prohibition on handgun possession in the home; statutes were not facially invalid under *Heller*, and defendant was not in his own home at the time of offenses. *Little v. United States*, 989 A.2d 1096, 2010 D.C. App. LEXIS 82 (2010).

Although neither a machine gun nor its ammunition is registrable, it is a violation of the registration statute to possess them. *United States v. Smith*, 118 WLR 2277 (Super. Ct. 1990).

A valid holder of a registration certificate for a firearm could not lend or give it to another person, who was not a holder of a registration certificate, whether that person be a relative or a friend, and whether the purpose was for protection or some other worthy objective. *District of Columbia v. Rowan*, 116 WLR 2353 (Super. Ct. 1988).

Review.

Remand was required in action under Second Amendment to give parties opportunity to develop more thorough factual record, where District of Columbia had provided mere assertions, rather than meaningful evidence, to justify its predictive judgments in enacting Firearms Registration Amendment Act to show substantial relationship between novel gun registration requirements, including all registration requirements as applied to long guns, and important governmental interests of protecting

police officers and aiding in crime control. *Heller v. District of Columbia*, 670 F.3d 1244, 2011 U.S. App. LEXIS 20130 (C.A.D.C. 2011).

Defendant preserved issue and had standing to challenge his convictions for carrying a pistol without a license (CPWL) and possession of an unregistered firearm (UF) under the Second Amendment by moving to dismiss indictment, even though he did not attempt to obtain a registration certificate and license for his handgun prior to his arrest. *Plummer v. United States*, 983 A.2d 323, 2009 D.C. App. LEXIS 572 (2009), reprinted as amended at 2009 D.C. App. LEXIS 753 (D.C. Nov. 12, 2009), amended by, modified by 2010 D.C. App. LEXIS 785 (D.C. May 20, 2010).

Admission of Drug Enforcement Administration (DEA) report, indicating in part that plastic bag recovered contained 4.5 grams of 84 percent pure crack cocaine, in violation of the Confrontation Clause, did not render defendant's three gun-related convictions unconstitutional; defendant indicated that weapon found was for personal use and identified the weapon as a rare type of handgun. *Smith v. United States*, 966 A.2d 367, 2009 D.C. App. LEXIS 35 (2009).

Entry of judgment on convictions for carrying a pistol without a license (CPWL), possession of an unregistered firearm (UF), and unlawful possession of ammunition (UA) was not plain error, even though defendant argued that the convictions were obtained in violation of the Second Amendment as construed by the United States Supreme Court in *District of Columbia v. Heller*, in which the Supreme Court held that the Second Amendment forbade any absolute prohibition of handguns held and used for self defense in the home; the jury found that defendant used the gun in question to assault another, and no evidence was presented that defendant possessed the gun for purposes of self defense. *Howerton v. United States*, 964 A.2d 1282, 2009 D.C. App. LEXIS 32 (2009).

Defendant's claim on appeal, alleging that gun control statutes denied him rights protected by the Second Amendment, was foreclosed by prior binding precedents of Court of Appeals, which rejected claim. *Andrews v. United States*, 922 A.2d 449, 2007 D.C. App. LEXIS 232 (2007).

Appellate court would review claim of juror coercion for plain error since there was no objection to the trial court's polling procedure and its actions in response to the jury's initial verdict form which contained a written notation that defendant was only "technically guilty" and that several jurors did not believe defendant had violated the spirit of the law. *Headspeth v. United States*, 910 A.2d 311, 2006 D.C. App. LEXIS 578 (2006).

Remand was required for hearing to determine advice defense counsel gave to defendant

concerning immigration consequences of guilty plea to possession of unregistered firearm and carrying pistol without license, for purpose of ineffective assistance of counsel claim, where record was unclear regarding such advice. *Kim v. United States*, 792 A.2d 241, 2002 D.C. App. LEXIS 42 (2002).

Right to jury trial.

Defendant was entitled to have jury trial for charges of possession of unregistered firearm and unlawful possession of ammunition, where each charge carried a maximum authorized punishment of more than six months' confinement. U.S.C. Const. Art. 3, § 2, cl. 3; Amend. 6; D.C. Code 1981, §§ 6-2311, 6-2361, 6-2376. *Henry v. United States*, 754 A.2d 926, 2000 D.C. App. LEXIS 135 (2000).

Standing.

Eighteen year-old defendant had standing to assert Second Amendment challenge to charges for unregistered firearm and unlawful possession of ammunition if he could show he met statutory requirements for obtaining registration certificate and license to possess firearms by showing, at evidentiary hearing, that application was accompanied by notarized statement of his parent or guardian that he had permission to own and use firearm to be registered and that parent or guardian assumed civil liability for all damages resulting from actions of defendant in use of firearm to be registered. *Headspeth v. District of Columbia*, 2012 WL 2049175 (2012).

Vacation of conviction.

Vacation of convictions for possessing pistol and ammunition without valid registration as they pertained to service revolver of defendant who was special police officer, on basis of defendant's absolute defense to possession of that unregistered firearm and ammunition, was necessary since there conceivably could be collateral consequences flowing from such convictions, even though convictions would remain with respect to second pistol. D.C. Code 1981, §§ 6-2311(a), (b)(1), 22-3204. *Chapman v. United States*, 493 A.2d 1026, 1985 D.C. App. LEXIS 402 (1985).

Validity.

Requirement of mere registration of handguns was longstanding, accepted for century in diverse states and cities and currently applicable to more than one fourth of nation by population, and hence such requirement in Firearms Registration Amendment Act was presumptively lawful; consequently, mere handgun registration requirement in Act did not violate Second Amendment, since presumption stood un rebutted. *Heller v. District of Columbia*, 670 F.3d 1244, 2011 U.S. App. LEXIS 20130 (C.A.D.C. 2011).

Statutes governing offense of carrying a pistol without a license (CPWL) and offense of possession of an unregistered firearm (UF) were not facially invalid; statutes, which required licensing and registration of pistols or handguns, had legitimate and significant penal purpose. *Plummer v. United States*, 983 A.2d 323, 2009 D.C. App. LEXIS 572 (2009), reprinted as amended at 2009 D.C. App. LEXIS 753 (D.C. Nov. 12, 2009), amended by, modified by 2010 D.C. App. LEXIS 785 (D.C. May 20, 2010).

Finding that prosecution of defendant for carrying a pistol without a license (CPWL), possession of an unregistered firearm (UF), and unlawful possession of ammunition (UA) did not violate his Second Amendment rights under *Heller*, which invalidated statutes banning handgun possession in the home, was not plain error; there was no evidence that when the police saw defendant toss pistol to the ground he was even within boundary lines or curtilage of his home, much less inside home itself, and no evidence linked defendant's possession of gun to any arguable motive of self-defense that had impelled him to remove gun from his home. *Sims v. United States*, 963 A.2d 147, 2008 D.C. App. LEXIS 493 (2008).

Defendant's claims that Second Amendment barred his prosecution for carrying a pistol without a license (CPWL), possession of an unregistered firearm (UF), and unlawful possession of ammunition (UA) and that these statutes were constitutionally invalid on their face in light of *Heller*, which held that the Second Amendment conferred an individual right to keep and bear arms, were not preserved for appeal since the record revealed no indication that defendant raised these claims in the trial court. *Sims v. United States*, 963 A.2d 147, 2008 D.C. App. LEXIS 493 (2008).

District of Columbia firearms statutes did not violate constitutional right to keep and bear arms of defendant convicted of carrying pistol without license, possession of unregistered firearm, and unlawful possession of ammunition under those statutes. D.C. Code 1981, §§ 6-2311, 6-2361, 22-3204; U.S.C. Const. Amend. 2. *Sandidge v. United States*, 520 A.2d 1057, 1987 D.C. App. LEXIS 286 (1987), writ of certiorari denied by 484 U.S. 868, 108 S. Ct. 193, 98 L. Ed. 2d 145, 1987 U.S. LEXIS 3348, 56 U.S.L.W. 3247 (1987).

Weight and sufficiency of evidence.

Meaningful evidence, not mere assertions, was required to justify predictive judgments by District of Columbia in enacting Firearms Registration Amendment Act to show substantial relationship between novel gun registration requirements, such as applied to long guns, and important governmental interests of protecting police officers and aiding in crime control, to

pass muster under Second Amendment through intermediate scrutiny. *Heller v. District of Columbia*, 670 F.3d 1244, 2011 U.S. App. LEXIS 20130 (C.A.D.C. 2011).

With respect to charge of possessing unregistered firearms, evidence was sufficient for jury to infer that all three defendants constructively possessed all three guns, in light of evidence that they were engaged in a common drug-trafficking enterprise and that each brandished a gun on at least one occasion. D.C. Code 1981, § 6-2311(a). *United States v. Evans*, 888 F.2d 891, 1989 U.S. App. LEXIS 16809 (C.A.D.C. 1989), writ of certiorari denied by 494 U.S. 1019, 110 S. Ct. 1325, 108 L. Ed. 2d 500, 1990 U.S. LEXIS 1215, 58 U.S.L.W. 3565 (1990).

There was no manifest miscarriage of justice in defendant's convictions under District of Columbia law based on proof that defendant was not licensed to carry arms and that two pistols recovered in his estranged wife's apartment were not registered in his name, even though defendant alleged evidence was insufficient in that record search was fatally flawed because he did not reside at his estranged wife's address and that record search had been limited to registrations and licenses in defendant's name at that address, where there was no claim that search using defendant's correct address would have uncovered any exculpatory license or registration record and where defendant's prior convictions would have made it unlawful for him to own, possess, or register pistol. D.C. Code 1981, §§ 6-2311(a), 6-2312(a)(2), 6-2361, 22-3202, 22-3204. *United States v. Jackson*, 824 F.2d 21, 1987 U.S. App. LEXIS 9570 (C.A.D.C. 1987), writ of certiorari denied by 484 U.S. 1013, 108 S. Ct. 715, 98 L. Ed. 2d 665, 1988 U.S. LEXIS 12, 56 U.S.L.W. 3460 (1988).

Evidence was insufficient to support two defendants' convictions for carrying a pistol without a license (CPWL), possession of an unregistered firearm (UF), and possession of unregistered ammunition (UA), even though the government presented proof that neither defendant had a license or registration for a pistol; the government's theory was that defendants aided and abetted a conspirator in his possession and carrying of a pistol, and the government did not present evidence that the coconspirator lacked a license and firearm registration on the day in question. *Walker v. United States*, 982 A.2d 723, 2009 D.C. App. LEXIS 541 (2009).

Evidence was sufficient to show that defendant had constructive possession of gun and ammunition found in vehicle that he had been driving, so as to support convictions for possession of an unregistered firearm (UF), unlawful possession of ammunition (UA), and carrying a pistol without a license (CPWL); gun was located next to where defendant had been sitting

and was immediately visible to law enforcement officer when he walked toward driver's side of vehicle. *Carter v. United States*, 957 A.2d 9, 2008 D.C. App. LEXIS 397 (2008).

There was sufficient evidence upon which jury could have found that defendant possessed a sawed-off shotgun, for purposes of charges of possession of an unregistered firearm and carrying a dangerous weapon outside the home or business; at trial, the government presented testimony that defendant had actual possession of the sawed-off shotgun prior to its being recovered by the police. *Wright v. United States*, 926 A.2d 1151, 2007 D.C. App. LEXIS 393 (2007).

Evidence was sufficient to find that defendant was in at least constructive possession of gun found in his station wagon, and thus, was sufficient to support convictions for possessory weapons offenses; government's evidence established that defendant owned the station wagon and that he was its driver on the night he was arrested, and police officers testified that the loaded revolver was on the car's floor at defendant's right thigh. *White v. United States*, 763 A.2d 715, 2000 D.C. App. LEXIS 278 (2000).

Finding that juvenile was guilty of possessing unregistered firearm was supported by evidence of certificate under seal indicating that there was no registration held by juvenile for a twenty gauge shotgun and that the gun was a sawed-off shotgun, which was unable to be registered under statute. D.C. Code 1981, §§ 6-2311(a), 6-2312(a). In re D.S., 747 A.2d 1182, 2000 D.C. App. LEXIS 64 (2000).

Evidence was insufficient to prove that juvenile knew of location of gun in vehicle in which he was a passenger or that juvenile intended to exercise dominion and control over the gun and, thus, was insufficient to prove that he was in constructive possession of the weapon; there was no direct evidence that juvenile knew where the gun was located, fact that juvenile began to walk away from car did not manifest consciousness of guilt, there was no evidence that juvenile was in the car for substantial period of time or that vehicle had functional interior light so that juvenile could have seen the gun, and intent to exercise control over the gun could not be inferred from fact that juvenile may have been able to feel the gun with his feet. D.C. Code 1981, §§ 6-2311(a), 6-2361, 22-3214(a). In re M.I.W., 667 A.2d 573, 1995 D.C. App. LEXIS 225 (1995).

In prosecution for carrying pistol without license, possession of unregistered firearm, and unlawful possession of ammunition, there was sufficient proof of operability of defendant's pistol; eyewitness testimony, as well as testimony of police officers that gun was fully loaded with live ammunition when recovered, established operability. D.C. Code 1981, §§ 6-2311(a), 6-2361(3), 22-3204(a). *Key v. United*

States, 587 A.2d 1072, 1991 D.C. App. LEXIS 48 (1991).

Evidence was insufficient to support weapons convictions on theory that defendant constructively possessed gun carried by companion who, when officers sought to question defendant and companion about automobile they had just exited, placed gun on ground near automobile while defendant watched; while fact finder could infer that defendant knew of presence of gun, gun was inferentially in companion's sole possession throughout time police observed defendant and companion. D.C. Code 1981, §§ 6-2311(a), 22-3204. In re L.A.V., 578 A.2d 708, 1990 D.C. App. LEXIS 215 (1990).

Juveniles' proximity to a pistol and ammunition in plain view in crack house was not sufficient to support adjudications of delinquency for possession of unregistered firearm and unlawful possession of ammunition where there was no evidence that juveniles, who were two of six persons roughly equidistant from the contraband, harbored the intent to guide the destiny of the weapon or the live rounds and where juveniles were found not guilty of any connection with the drugs. D.C. Code 1981, §§ 6-2311, 6-2361. In re T.M., 577 A.2d 1149, 1990 D.C. App. LEXIS 165 (1990).

Evidence was sufficient to establish defendant's constructive possession of firearm, ammunition, and cocaine found within apartment, thus supporting convictions for possession of an unregistered firearm, unlawful possession of ammunition, and possession with intent to distribute cocaine; in addition to fact that contraband was found lying in plain view on apartment floor within defendant's ready access, defendant had attempted to hide himself when police initially entered apartment; moreover, circumstances under which apartment was rented and occupied by defendant's juvenile companion were suspicious. D.C. Code 1981, §§ 6-2311, 6-2361, 33-541(a)(1). *Thompson v. United States*, 567 A.2d 907, 1989 D.C. App. LEXIS 261 (1989).

Constructive possession of weapon may be established by either direct or circumstantial evidence. D.C. Code 1981, §§ 6-2311, 22-3204. *Logan v. United States*, 489 A.2d 485, 1985 D.C. App. LEXIS 346 (1985).

Knowledge of gun's presence may be inferred from surrounding circumstances; Government need not offer direct evidence of defendants' knowledge. D.C. Code 1981, §§ 6-2311, 22-3204. *Logan v. United States*, 489 A.2d 485, 1985 D.C. App. LEXIS 346 (1985).

Testimony that officers saw vehicle pull over slightly and slow down, that passenger door opened and was held steady, and that object was thrown from car shortly before defendants' vehicle stopped, and that gun was found three or four car lengths behind supported inference that driver and both passengers had knowledge

and control of gun recovered from street and, thus, supported convictions for carrying pistol without license and possession of unregistered firearm. D.C. Code 1981, §§ 6-2311, 22-3204. *Logan v. United States*, 489 A.2d 485, 1985 D.C. App. LEXIS 346 (1985).

Although the police officer who found the gun and five rounds of ammunition testified that two inches of the gun's handle were visible, where the officer was looking through the front windshield, and was using a flashlight, defendants were sitting in the backseat in the dark, and front seat was a bench seat, rather than two bucket seats, thus diminishing likelihood that defendants saw gun, there was insufficient evidence from which to reasonably conclude that defendants knew gun was in car and, thus, insufficient evidence from which to sustain defendants' convictions of possession of an unregistered weapon and ammunition therefor. D.C.

Code 1981, §§ 6-2311, 6-2361, 11-707(a); §§ 22-2202, 22-2205 (repealed). *Easley v. United States*, 482 A.2d 779, 1984 D.C. App. LEXIS 497 (1984).

The government must show a connection between the seized weapon and the criminal venture in order to enable the jury reasonably to infer the venturer's knowledge of the weapon. D.C. Code 1981, §§ 6-2311, 6-2361, 11-707(a); §§ 22-2202, 22-2205 (repealed). *Easley v. United States*, 482 A.2d 779, 1984 D.C. App. LEXIS 497 (1984).

Jury's finding that defendant did indeed own or possess pistol was supported by his admission after questioning that gun was his and by fact that gun was found in box of men's clothing in apartment in which defendant was the sole male occupant. D.C. Code 1981, §§ 6-2311, 6-2361, 22-3203. *Reid v. United States*, 466 A.2d 433, 1983 D.C. App. LEXIS 479 (1983).

§ 7-2502.02. Registration of certain firearms prohibited.

(a) A registration certificate shall not be issued for a:

- (1) Sawed-off shotgun;
- (2) Machine gun;
- (3) Short-barreled rifle;

(4) Pistol not validly registered to the current registrant in the District prior to September 24, 1976, except that the prohibition on registering a pistol shall not apply to:

(A) Any organization that employs at least one commissioned special police officer or other employee licensed to carry a firearm and that arms the employee with a firearm during the employee's duty hours;

(B) A police officer who has retired from the Metropolitan Police Department; or

(C) Any person who seeks to register a pistol for use in self-defense within that person's home;

- (5) An unsafe firearm prohibited under § 7-2505.04;
- (6) An assault weapon; or
- (7) A .50 BMG rifle.

(b) Repealed.

(Sept. 24, 1976, D.C. Law 1-85, title II, § 202, 23 DCR 2464; Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780; May 7, 1993, D.C. Law 9-266, § 2(b), 39 DCR 5676; Mar. 31, 2009, D.C. Law 17-372, § 3(c), 56 DCR 1365.)

Section references. — This section is referred to in §§ 7-2502.06a, 7-2502.09, 7-2504.01, and 7-2505.02.

Prior Codifications. — 1981 Ed., § 6-2312. 1973 Ed., § 6-1812.

Effect of amendments. — D.C. Law 17-372, in subsec. (a), deleted "or" from the end of par. (3), rewrote par. (4), and added pars. (5), (6), and (7); and repealed subsec. (b).

Emergency legislation. — For temporary (90 day) amendment, see § 2(a) of Firearms Control Emergency Amendment Act of 2008 (D.C. Act 17-422, July 16, 2008, 55 DCR 8237).

For temporary (90 day) amendment of section, see § 2(b) of Second Firearms Control Emergency Amendment Act of 2008 (D.C. Act 17-502, September 16, 2008, 55 DCR 9904).

For temporary (90 day) repeal of D.C. Act

17-422, see § 5 of Second Firearms Control Emergency Amendment Act of 2008 (D.C. Act 17-502, September 16, 2008, 55 DCR 9904).

For temporary (90 day) amendment of section, see §§ 2(b) and 4 of Second Firearms Control Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-601, December 12, 2008, 56 DCR 9).

For temporary (90 day) amendment of section, see § 3(c) of Firearms Registration Emergency Amendment Act of 2008 (D.C. Act 17-651, January 6, 2009, 56 DCR 911).

For temporary (90 day) amendment of section, see § 2(c) of Firearms Emergency Amendment Act of 2012 (D.C. Act 19-352, May 11, 2012, 59 DCR 5116).

For temporary (90 day) amendment of sec-

tion, see § 2(c) of the Firearms Amendments Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-394, July 18, 2012, 59 DCR 8694).

Legislative history of Law 1-85. — For legislative history of D.C. Law 1-85, see Historical and Statutory Notes following § 7-2501.01.

Legislative history of Law 2-62. — For legislative history of D.C. Law 2-62, see Historical and Statutory Notes following § 7-2501.01.

Legislative history of Law 9-266. — For legislative history of D.C. Law 9-266, see Historical and Statutory Notes following § 7-2502.01.

Legislative history of Law 17-372. — For Law 17-372, see notes following § 7-2501.01.

CASE NOTES

ANALYSIS

Evidence.
In general.
Standing.
Validity.

Evidence.

Meaningful evidence, not mere assertions, was required to justify predictive judgments by District of Columbia in enacting Firearms Registration Amendment Act to show substantial relationship between novel gun registration requirements, such as applied to long guns, and important governmental interests of protecting police officers and aiding in crime control, to pass muster under Second Amendment through intermediate scrutiny. *Heller v. District of Columbia*, 670 F.3d 1244, 2011 U.S. App. LEXIS 20130 (C.A.D.C. 2011).

Finding that juvenile was guilty of possessing unregistered firearm was supported by evidence of certificate under seal indicating that there was no registration held by juvenile for a twenty gauge shotgun and that the gun was a sawed-off shotgun, which was unable to be registered under statute. D.C. Code 1981, §§ 6-2311(a), 6-2312(a). *In re D.S.*, 747 A.2d 1182, 2000 D.C. App. LEXIS 64 (2000).

In general.

Complaint, alleging that enforcement of District of Columbia statute regulating manner in which firearms were to be stored violated federal statute prohibiting racial discrimination, failed to state a claim upon which relief could be granted, absent any allegation that plaintiff was purposefully discriminated against based on her race. *Seegars v. Ashcroft*, 297 F.Supp.2d 201, 2004 U.S. Dist. LEXIS 406 (2004), affirmed in part and reversed in part by 396 F.3d 1248, 364 U.S. App. D.C. 512, 2005 U.S. App. LEXIS 1965 (2005).

Any firearm not properly in compliance with Firearms Control Act is subject to destruction. D.C. Code § 6-1801 et seq. *Kuhn v. Cissel*, 409 A.2d 182, 1979 D.C. App. LEXIS 506 (1979).

Firearms Control Act of 1975 bars anyone from receiving, possessing, or having under his or her control any firearm or destructive device unless it is registered, and such Act makes unregistrable certain firearms. D.C. Code §§ 6-1801 et seq., 6-1875. *Kuhn v. Cissel*, 409 A.2d 182, 1979 D.C. App. LEXIS 506 (1979).

Although shotgun could have been lawfully possessed in District of Columbia, no application for registration certificate was made by either owner or his friend who had borrowed shotgun, and thus its possession within District by friend was unlawful. D.C. Code § 6-1811. *Kuhn v. Cissel*, 409 A.2d 182, 1979 D.C. App. LEXIS 506 (1979).

Wife of party who had borrowed shotgun was technically in violation of Firearms Control Act both by exercising sufficient control over shotgun in its delivery to police and by being in constructive possession of it while it was kept in her home; thus, wife could have been subject to arrest or prosecution were it not for provision of Firearms Control Act providing immunity for one who surrenders or delivers weapon. D.C. Code §§ 6-1811, 6-1875(a). *Kuhn v. Cissel*, 409 A.2d 182, 1979 D.C. App. LEXIS 506 (1979).

By bringing shotgun into District of Columbia to lend to his friend, owner violated provision of Firearms Control Act providing that no person may loan, borrow, give, or rent to or from another person, any firearm, destructive device, or ammunition. D.C. Code § 6-1871(b). *Kuhn v. Cissel*, 409 A.2d 182, 1979 D.C. App. LEXIS 506 (1979).

The rationale supporting statute, which prohibits residents of District of Columbia from possessing guns whose fire power has legislatively been deemed to be dangerous, differs

from rationale undergirding second statute, which forbids certain modifications of firearms to be made after registration, and thus, since guns in question, by virtue of their structure, had capability to shoot prohibited number of rounds without reloading, they could properly be found to be unregistrable even though presented for registration with clips holding less than prohibited number of rounds. D.C. Code §§ 6-1802(10), 6-1812. *Fesjian v. Jefferson*, 399 A.2d 861, 1979 D.C. App. LEXIS 298 (1979).

Provision within Firearms Control Regulations Act of 1975 is intended to allow both residents and nonresidents of District of Columbia to participate in recreational firearm-related activity so long as their firearms are validly registered in their respective jurisdictions and also meet local safety criteria. D.C. Code § 6-1811(b)(3). *McIntosh v. Washington*, 395 A.2d 744, 1978 D.C. App. LEXIS 365 (1978).

Firearms Control Regulations Act of 1975 would not prohibit company from selling handguns to qualified residents, but such sales would be subject to District of Columbia Council's authority to regulate conduct of dealers in dangerous or deadly weapons. D.C. Code §§ 6-1811(a), (a)(1), 6-1852, 47-2340. *McIntosh v. Washington*, 395 A.2d 744, 1978 D.C. App. LEXIS 365 (1978).

Although neither a machine gun nor its ammunition is registrable, it is a violation of the registration statute to possess them. *United States v. Smith*, 118 WLR 2277 (Super. Ct. 1990).

Standing.

Challenge to District of Columbia statutes allegedly prohibiting D.C. residents from lawfully possessing pistols, was not ripe for review; residents failed to demonstrate any injury resulting from enforcement of the statutes inasmuch as only one of them had applied for a registration certificate and been refused, more than 25 years previously, none of them utilized formal review process, and they were unable to establish any hardship that would result from utilizing such review process. *Seegars v. Ashcroft*, 297 F.Supp.2d 201, 2004 U.S. Dist. LEXIS 406 (2004), affirmed in part and reversed in part by 396 F.3d 1248, 364 U.S. App. D.C. 512, 2005 U.S. App. LEXIS 1965 (2005).

Assertions that plaintiffs, citizens of the District of Columbia, merely desired to obtain pistols to be possessed within the District, were insufficient to establish any injury resulting from enforcement of District's gun control statutes, and therefore plaintiffs lacked standing to challenge the statutes; plaintiffs' grievance was only generalized inasmuch as there was no threat of imminent prosecution. *Seegars v. Ashcroft*, 297 F.Supp.2d 201, 2004 U.S. Dist.

LEXIS 406 (2004), affirmed in part and reversed in part by 396 F.3d 1248, 364 U.S. App. D.C. 512, 2005 U.S. App. LEXIS 1965 (2005).

Validity.

District of Columbia statute banning handgun possession in the home violated Second Amendment. *District of Columbia v. Heller*, 128 S.Ct. 2783, 2008 U.S. LEXIS 5268 (2008).

District of Columbia statute banning handgun possession in the home violated Second Amendment. *District of Columbia v. Heller*, 128 S.Ct. 2783, 2008 U.S. LEXIS 5268 (2008).

District of Columbia statute containing prohibition against rendering any lawful firearm in the home operable for purpose of immediate self-defense violated Second Amendment. *District of Columbia v. Heller*, 128 S.Ct. 2783, 2008 U.S. LEXIS 5268 (2008).

District of Columbia's statutory prohibition of the registration of a pistol not registered in the District of Columbia by the applicant prior to 1976 was unconstitutional under the Second Amendment. *Parker v. District of Columbia*, 478 F.3d 370, 2007 U.S. App. LEXIS 5519 (C.A.D.C. 2007), affirmed by 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637, 2008 U.S. LEXIS 5268, 76 U.S.L.W. 4631, 21 Fla. L. Weekly Fed. S 497 (2008), writ of certiorari denied by 554 U.S. 932, 128 S. Ct. 2994, 171 L. Ed. 2d 910, 2008 U.S. LEXIS 5279, 76 U.S.L.W. 3683 (2008).

District of Columbia's statutory prohibition of the registration of a pistol not registered in the District of Columbia by the applicant prior to 1976 was unconstitutional under the Second Amendment. *Parker v. District of Columbia*, 478 F.3d 370, 2007 U.S. App. LEXIS 5519 (C.A.D.C. 2007), affirmed by 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637, 2008 U.S. LEXIS 5268, 76 U.S.L.W. 4631, 21 Fla. L. Weekly Fed. S 497 (2008), writ of certiorari denied by 554 U.S. 932, 128 S. Ct. 2994, 171 L. Ed. 2d 910, 2008 U.S. LEXIS 5279, 76 U.S.L.W. 3683 (2008).

District of Columbia special police officer permitted to carry a handgun on duty as a guard at the Federal Judicial Center, who wished to possess one at his home and who applied for and was denied a registration certificate to own a handgun, had standing to raise §§ 1983 challenge to provisions of the District of Columbia's gun control laws; officer had invoked his rights under the Second Amendment to challenge the statutory classifications used to bar his ownership of a handgun under District of Columbia law, and the formal process of application and denial, however routine, made the injury to officer's alleged constitutional interest concrete and particular. *Parker v. District of Columbia*, 478 F.3d 370, 2007 U.S. App. LEXIS 5519 (C.A.D.C. 2007), affirmed by 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d

637, 2008 U.S. LEXIS 5268, 76 U.S.L.W. 4631, 21 Fla. L. Weekly Fed. S 497 (2008), writ of certiorari denied by 554 U.S. 932, 128 S. Ct. 2994, 171 L. Ed. 2d 910, 2008 U.S. LEXIS 5279, 76 U.S.L.W. 3683 (2008).

District of Columbia's general threat to prosecute violations of its gun control laws did not constitute an Article III injury sufficient to confer standing on citizens to bring an action challenging the gun control laws on Second Amendment grounds, given that the citizens only expressed an intention to violate the District of Columbia's gun control laws but had suffered no injury in fact. *Parker v. District of Columbia*, 478 F.3d 370, 2007 U.S. App. LEXIS 5519 (C.A.D.C. 2007), affirmed by 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637, 2008 U.S. LEXIS 5268, 76 U.S.L.W. 4631, 21 Fla. L. Weekly Fed. S 497 (2008), writ of certiorari denied by 554 U.S. 932, 128 S. Ct. 2994, 171 L. Ed. 2d 910, 2008 U.S. LEXIS 5279, 76 U.S.L.W. 3683 (2008).

District of Columbia's statutory requirement that a registered firearm be kept unloaded and disassembled or bound by trigger lock or similar device, unless such firearm is kept at a place of business, or while being used for lawful recreational purposes within the District of Columbia, was unconstitutional under the Second Amendment. *Parker v. District of Columbia*, 478 F.3d 370, 2007 U.S. App. LEXIS 5519 (C.A.D.C. 2007), affirmed by 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637, 2008 U.S. LEXIS 5268, 76 U.S.L.W. 4631, 21 Fla. L. Weekly Fed. S 497 (2008), writ of certiorari denied by 554 U.S. 932, 128 S. Ct. 2994, 171 L. Ed. 2d 910, 2008 U.S. LEXIS 5279, 76 U.S.L.W. 3683 (2008).

Assault weapons and large capacity ammunition feeding devices constituted weapons that were not in common use, were not typically possessed by law-abiding citizens for lawful purposes, and were "dangerous and unusual" within meaning of *Heller*, and thus, assault weapons and large capacity ammunition feeding devices fell outside scope of the core Second Amendment right, and thus, the bans on assault weapons and large capacity ammunition feeding devices under District of Columbia's Firearms Registration Amendment Act were constitutional; because the bans did not implicate the core Second Amendment right, the court did not need not to assess whether these laws survived intermediate scrutiny. *Heller v. District of Columbia*, 698 F.Supp.2d 179, 2010 U.S. Dist. LEXIS 29063 (2010), affirmed in part

and vacated in part by, remanded by 670 F.3d 1244, 399 U.S. App. D.C. 314, 2011 U.S. App. LEXIS 20130 (2011).

It is well within police power of District of Columbia to declare as contraband machine guns, sawed-off shotguns, blackjacks and switchblades without offending commerce clause. D.C. Code 1973, §§ 22-3204, 22-3214; D.C. Code 1978 Supp., § 6-1812(d, e); U.S. Const.Art. 1, § 8, cl. 3. *Smith v. District of Columbia*, 436 A.2d 53, 1981 D.C. App. LEXIS 375 (1981).

Statute, which renders new handguns and new machine guns unregistrable, yet contains a grandfather clause permitting owners of previously registered handguns to retain and re-register their firearms while denying owners of machine guns same right, did not violate equal protection clause, since determination not to grandfather weapons with greater fire power had a rational basis. D.C. Code §§ 6-1812, 6-1816; U.S. Const. Amend. 14. *Fesjian v. Jefferson*, 399 A.2d 861, 1979 D.C. App. LEXIS 298 (1979).

Firearms Control Regulations Act of 1975 is not unconstitutionally vague. *McIntosh v. Washington*, 395 A.2d 744, 1978 D.C. App. LEXIS 365 (1978).

Firearms Control Regulations Act of 1975 is not antithetical to Administrative Procedure Act. D.C. Code §§ 1-1509, 6-1801 et seq., 6-1820(b), 6-1846(b), 6-1879. *McIntosh v. Washington*, 395 A.2d 744, 1978 D.C. App. LEXIS 365 (1978).

Statutory classification, under which individuals are allowed to maintain and assemble firearms at their places of business but not at home, does not deny equal protection. D.C. Code § 6-1872; U.S. Const. Amend. 14. *McIntosh v. Washington*, 395 A.2d 744, 1978 D.C. App. LEXIS 365 (1978).

Home Rule Act's provision vesting legislative power in District of Columbia Council afforded Council authority to enact Firearms Control Regulations Act of 1975, notwithstanding Home Rule Act provision that Council was to have no authority to enact any act with respect to any provision of title of District of Columbia Code relating to criminal procedure or with respect to any provision of titles relating to crimes and treatment of prisoners during 24 months after members of Council first elected pursuant to such Act were to take office. D.C. Code §§ 1-144(a), 1-147(a)(9), 6-1801 et seq., 22-101 et seq., 23-101 et seq., 24-103 et seq. *McIntosh v. Washington*, 395 A.2d 744, 1978 D.C. App. LEXIS 365 (1978).

§ 7-2502.03. Qualifications for registration; information required for registration.

(a) No registration certificate shall be issued to any person (and in the case

of a person between the ages of 18 and 21, to the person and his signatory parent or guardian) or organization unless the Chief determines that such person (or the president or chief executive in the case of an organization):

(1) Is 21 years of age or older; provided, that the Chief may issue to an applicant between the ages of 18 and 21 years old, and who is otherwise qualified, a registration certificate if the application is accompanied by a notarized statement of the applicant's parent or guardian:

(A) That the applicant has the permission of his parent or guardian to own and use the firearm to be registered; and

(B) The parent or guardian assumes civil liability for all damages resulting from the actions of such applicant in the use of the firearm to be registered; provided further, that such registration certificate shall expire on such person's 21st birthday;

(2) Has not been convicted of a crime of violence, weapons offense, or of a violation of this unit;

(3) Is not under indictment for a crime of violence or a weapons offense;

(4) Has not been convicted within 5 years prior to the application of any:

(A) Violation in any jurisdiction of any law restricting the use, possession, or sale of any narcotic or dangerous drug;

(B) A violation of § 22-407, regarding threats to do bodily harm, or § 22-404, regarding assaults and threats, or any similar provision of the law of any other jurisdiction so as to indicate a likelihood to make unlawful use of a firearm;

(C) Two or more violations of § 50-2201.05(b) or, in any other jurisdiction, any law restricting driving under the influence of alcohol or drugs; or

(D) Intrafamily offense, including any similar provision of the law of any other jurisdiction;

(5) Within the 5-year period immediately preceding the application, has not been acquitted of any criminal charge by reason of insanity or has not been adjudicated a chronic alcoholic by any court; provided, that this paragraph shall not apply if such person shall present to the Chief, with the application, a medical certification indicating that the applicant has recovered from such insanity or alcoholic condition and is capable of safe and responsible possession of a firearm;

(6) Within the 5 years immediately preceding the application, has not been voluntarily or involuntarily committed to any mental hospital or institution; provided, that this paragraph shall not apply, if such person shall present to the Chief, with the application, a medical certification that the applicant has recovered from whatever malady prompted such commitment;

(6A) Within the 5 years immediately preceding the application, has not had a history of violent behavior.

(7) Does not appear to suffer from a physical defect which would tend to indicate that the applicant would not be able to possess and use a firearm safely and responsibly;

(8) Has not been adjudicated negligent in a firearm mishap causing death or serious injury to another human being;

(9) Is not otherwise ineligible to possess a firearm under § 22-4503;

(10) Has not failed to demonstrate satisfactorily a knowledge of the laws of the District of Columbia pertaining to firearms and, in particular, the safe and responsible use, handling, and storage of the same in accordance with training, tests, and standards prescribed by the Chief; provided, that once this determination is made with respect to a given applicant for a particular type of firearm, it need not be made again for the same applicant with respect to a subsequent application for the same type of firearms; provided, further, that this paragraph shall not apply with respect to any firearm reregistered pursuant to § 7-2502.06;

(11) Has vision better than or equal to that required to obtain a valid driver's license under the laws of the District of Columbia; provided, that current licensure by the District of Columbia, of the applicant to drive, shall be prima facie evidence that such applicant's vision is sufficient and; provided further, that this determination shall not be made with respect to persons applying to reregister any firearm pursuant to § 7-2502.06;

(12)(A) Has not been the respondent in an intrafamily proceeding in which a civil protection order was issued against the applicant pursuant to § 16-1005; provided, that an applicant who has been the subject of such an order shall be eligible for registration if the applicant has submitted to the Chief a certified court record establishing that the order has expired or has been rescinded for a period of 5 years or more; or

(B) Has not been the respondent in a proceeding in which a foreign protection order, as that term is defined in § 16-1041, was issued against the applicant; provided, that an applicant who has been the subject of such an order shall be eligible for registration if the applicant has submitted to the Chief a certified court record establishing that the order has expired or has been rescinded for a period of 5 years;

(13)(A) Has completed a firearms training or safety course or class conducted by a state-certified firearms instructor or a certified military firearms instructor that provides, at a minimum, a total of at least one hour of firing training at a firing range and a total of at least 4 hours of classroom instruction.

(B) An affidavit signed by the certified firearms instructor who conducted or taught the course, providing the name, address, and phone number of the instructor and attesting to the successful completion of the course by the applicant shall constitute evidence of certified successful completion under this paragraph.

(14) Has not been prohibited from possessing or registering a firearm pursuant to § 7-2502.08.

(b) Every person applying for a registration certificate shall provide on a form prescribed by the Chief:

- (1) The full name or any other name by which the applicant is known;
- (2) The present address and each home address where the applicant has resided during the 5-year period immediately preceding the application;
- (3) The present business or occupation of the applicant and the address and phone number of the employer;
- (4) The date and place of birth of the applicant;

(5) The sex of the applicant;

(6) Whether (and if so, the reasons) the District, the United States or the government of any state or subdivision of any state has denied or revoked the applicant's license, registration certificate, or permit pertaining to any firearm;

(7) A description of the applicant's role in any mishap involving a firearm, including the date, place, time, circumstances, and the names of the persons injured or killed;

(8) Repealed.

(9) The caliber, make, model, manufacturer's identification number, serial number, and any other identifying marks on the firearm;

(10) The name and address of the person or organization from whom the firearm was obtained, and in the case of a dealer, his dealer's license number;

(11) Where the firearm will generally be kept;

(12) Whether the applicant has applied for other registration certificates issued and outstanding;

(13) Such other information as the Chief determines is necessary to carry out the provisions of this unit.

(c) Every organization applying for a registration certificate shall:

(1) With respect to the president or chief executive of such organization, comply with the requirements of subsection (b) of this section; and

(2) Provide such other information as the Chief determines is necessary to carry out the provisions of this unit.

(d) The Chief shall require any registered pistol to be submitted for a ballistics identification procedure and shall establish a reasonable fee for the procedure.

(e) The Chief shall register no more than one pistol per registrant during any 30-day period; provided, that the Chief may permit a person first becoming a District resident to register more than one pistol if those pistols were lawfully owned in another jurisdiction for a period of 6 months prior to the date of the application.

(Sept. 24, 1976, D.C. Law 1-85, title II, § 203, 23 DCR 2464; Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780; Mar. 31, 2009, D.C. Law 17-372, § 3(d), 56 DCR 1365; June 3, 2011, D.C. Law 18-377, § 2(a), 58 DCR 1174.)

Section references. — This section is referred to in §§ 7-2502.04, 7-2502.05, 7-2502.08, 7-2502.09, and 7-2504.02.

Prior Codifications. — 1981 Ed., § 6-2313. 1973 Ed., § 6-1813.

Effect of amendments. — D.C. Law 17-372, in subsec. (a)(4), deleted "or" from the end of par. (A) and added pars. (C) and (D); added subsec. (a)(6A); in subsec. (a)(10), substituted "and, in particular, the safe and responsible use, handling, and storage of the same in accordance with training, tests, and standards" for "and the safe and responsible use of the same in accordance with tests and standards" and deleted "and" from the end; in subsec. (a)(11), substituted a semicolon for a period; added

subsecs. (a)(12), (13), and (14); and added subsecs. (d) and (e).

D.C. Law 18-377 rewrote subsec. (a)(4)(D); in subsec. (a)(9), substituted "firearm" for "pistol"; in subsec. (a)(14), substituted "§ 7-2502.08" for "§ 7-2502.09"; rewrote subsec. (b)(3); and repealed subsec. (b)(8).

Emergency legislation. — For temporary (90 day) amendment, see § 2(b) of Firearms Control Emergency Amendment Act of 2008 (D.C. Act 17-422, July 16, 2008, 55 DCR 8237).

For temporary (90 day) amendment of section, see § 2(c) of Second Firearms Control Emergency Amendment Act of 2008 (D.C. Act 17-502, September 16, 2008, 55 DCR 9904).

For temporary (90 day) repeal of D.C. Act

17-422, see § 5 of Second Firearms Control Emergency Amendment Act of 2008 (D.C. Act 17-502, September 16, 2008, 55 DCR 9904).

For temporary (90 day) amendment of section, see §§ 2(c) and 4 of Second Firearms Control Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-601, December 12, 2008, 56 DCR 9).

For temporary (90 day) amendment of section, see § 3(d) of Firearms Registration Emergency Amendment Act of 2008 (D.C. Act 17-651, January 6, 2009, 56 DCR 911).

For temporary (90 day) amendment of section, see § 502(a) of Public Safety Legislation Sixty-Day Layover Emergency Amendment Act of 2010 (D.C. Act 18-693, January 18, 2011, 58 DCR 640).

For temporary (90 day) amendment of section, see § 502(a) of Public Safety Legislation Sixty-Day Layover Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-45, April 20, 2011, 58 DCR 3701).

For temporary (90 day) amendment of section, see § 2(d) of Firearms Emergency Amendment Act of 2012 (D.C. Act 19-352, May 11, 2012, 59 DCR 5116).

For temporary (90 day) amendment of section, see § 2(d) of the Firearms Amendments Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-394, July 18, 2012, 59 DCR 8694).

Legislative history of Law 1-85. — For legislative history of D.C. Law 1-85, see Historical and Statutory Notes following § 7-2501.01.

Legislative history of Law 2-62. — For legislative history of D.C. Law 2-62, see Historical and Statutory Notes following § 7-2501.01.

Legislative history of Law 17-372. — For Law 17-372, see notes following § 7-2501.01.

Legislative history of Law 18-377. — Law 18-377, the “Criminal Code Amendment Act of 2010”, was introduced in Council and assigned Bill No. 18-963, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on December 7, 2010, and December 21, 2010, respectively. Signed by the Mayor on February 2, 2011, it was assigned Act No. 18-722 and transmitted to both Houses of Congress for its review. D.C. Law 18-377 became effective on June 3, 2011.

CASE NOTES

ANALYSIS

In general.
Validity.

In general.

Provision within Firearms Control Regulations Act of 1975 is intended to allow both residents and nonresidents of District of Columbia to participate in recreational firearm-related activity so long as their firearms are validly registered in their respective jurisdictions and also meet local safety criteria. D.C. Code § 6-1811(b)(3). *McIntosh v. Washington*, 395 A.2d 744, 1978 D.C. App. LEXIS 365 (1978).

It is absolutely clear from this section and §§ 6-2311, 6-2323, 6-2361 and 6-2375 and the language and phrasing of other provisions of the Firearms Control Regulation Act of 1975 that the Act focuses equally, if not more, on the person than on the firearm. This dual emphasis fully comports with the purpose of the Act to freeze the handgun population within the District of Columbia by expanding and strengthening the then preexisting firearm registration standards and to prescribe criminal penalties for the violation of its provisions. *District of Columbia v. Rowan*, 116 WLR 2353 (Super. Ct. 1988).

A valid holder of a registration certificate for a firearm could not lend or give it to another person, who was not a holder of a registration certificate, whether that person be a relative or

a friend, and whether the purpose was for protection or some other worthy objective. *District of Columbia v. Rowan*, 116 WLR 2353 (Super. Ct. 1988).

Validity.

Defendant convicted of attempted possession of an unregistered firearm failed to establish, as a matter of plain error, that firearms law violated Second Amendment as applied to him, where the record on appeal did not establish that defendant met all requirements for registering a firearm, such as those pertaining to mental health history, prior adjudication for firearm negligence, and vision. *Lowery v. United States*, 3 A.3d 1169, 2010 D.C. App. LEXIS 511 (2010), writ of certiorari denied by 132 S. Ct. 1090, 181 L. Ed. 2d 982, 2012 U.S. LEXIS 708, 80 U.S.L.W. 3425 (U.S. 2012).

Statutes establishing qualifications for firearms registration, that were severable from the flat ban on registering handguns that was ruled unconstitutional in the United States Supreme Court's decision in *Heller*, were compatible with the core interest protected by the Second Amendment, and were not unconstitutional. *Lowery v. United States*, 3 A.3d 1169, 2010 D.C. App. LEXIS 511 (2010), writ of certiorari denied by 132 S. Ct. 1090, 181 L. Ed. 2d 982, 2012 U.S. LEXIS 708, 80 U.S.L.W. 3425 (U.S. 2012).

Firearms Control Regulations Act of 1975 is not unconstitutionally vague. *McIntosh v. Washington*, 395 A.2d 744, 1978 D.C. App. LEXIS 365 (1978).

Firearms Control Regulations Act of 1975 is not antithetical to Administrative Procedure Act. D.C. Code §§ 1-1509, 6-1801 et seq., 6-1820(b), 6-1846(b), 6-1879. *McIntosh v. Washington*, 395 A.2d 744, 1978 D.C. App. LEXIS 365 (1978).

Home Rule Act's provision vesting legislative power in District of Columbia Council afforded Council authority to enact Firearms Control Regulations Act of 1975, notwithstanding Home Rule Act provision that Council was to have no authority to enact any act with respect to any provision of title of District of Columbia Code relating to criminal procedure or with respect to any provision of titles relating to

crimes and treatment of prisoners during 24 months after members of Council first elected pursuant to such Act were to take office. D.C. Code §§ 1-144(a), 1-147(a)(9), 6-1801 et seq., 22-101 et seq., 23-101 et seq., 24-103 et seq. *McIntosh v. Washington*, 395 A.2d 744, 1978 D.C. App. LEXIS 365 (1978).

Firearms Control Regulations Act of 1975, in imposing criminal penalties on those who fail to register firearms regardless of their knowledge of the duty to register, does not deny due process. D.C. Code § 6-1876; *U.S. Const. Amend. 14. McIntosh v. Washington*, 395 A.2d 744, 1978 D.C. App. LEXIS 365 (1978).

§ 7-2502.04. Fingerprints and photographs of applicants; application in person required.

(a) The Chief may require any person applying for a registration certificate to be fingerprinted if, in his judgment, this is necessary to conduct an efficient and adequate investigation into the matters described in § 7-2502.03 and to effectuate the purpose of this unit; provided, that any person who has been fingerprinted by the Chief within 6 years prior to submitting the application need not, in the Chief's discretion, be fingerprinted again if he offers other satisfactory proof of identity.

(b) Each applicant, other than an organization, shall submit with the application 2 full-face photographs of himself, 1 ¾ by 1 ⅞ inches in size which shall have been taken within the 30-day period immediately preceding the filing of the application.

(c) Every applicant (or in the case of an organization, the president or chief executive, or a person authorized in writing by him), shall appear in person at a time and place prescribed by the Chief, and may be required to bring with him the firearm for which a registration certificate is sought, which shall be transported in accordance with § 22-4504.02.

(Sept. 24, 1976, D.C. Law 1-85, title II, § 204, 23 DCR 2464; Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780; Mar. 31, 2009, D.C. Law 17-372, § 3(e), 56 DCR 1365.)

Prior Codifications. — 1981 Ed., § 6-2314. 1973 Ed., § 6-1814.

Effect of amendments. — D.C. Law 17-372, in subsec. (a), substituted "6 years" for "5 years"; and, in subsec. (c), substituted "shall be transported in accordance with § 22-4504.02" for "shall be unloaded and securely wrapped, and carried in open view".

Emergency legislation. — For temporary (90 day) amendment of section, see § 3(e) of Firearms Registration Emergency Amendment Act of 2008 (D.C. Act 17-651, January 6, 2009, 56 DCR 911).

For temporary (90 day) amendment of section, see § 2(e) of Firearms Emergency Amend-

ment Act of 2012 (D.C. Act 19-352, May 11, 2012, 59 DCR 5116).

For temporary (90 day) amendment of section, see § 2(e) of the Firearms Amendments Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-394, July 18, 2012, 59 DCR 8694).

Legislative history of Law 1-85. — For legislative history of D.C. Law 1-85, see Historical and Statutory Notes following § 7-2501.01.

Legislative history of Law 2-62. — For legislative history of D.C. Law 2-62, see Historical and Statutory Notes following § 7-2501.01.

Legislative history of Law 17-372. — For Law 17-372, see notes following § 7-2501.01.

CASE NOTES

Validity.

Because no individual could possess an unregistered firearm in the District of Columbia pursuant to District of Columbia's Firearms Registration Amendment Act, the Act's registration requirements plainly implicated the core Second Amendment right, that is, the right to defend one's self in one's home, and therefore, proceeding to the intermediate scrutiny

analysis, the court had to first examine whether there was an important governmental interest in promulgating the registration requirements. *Heller v. District of Columbia*, 698 F.Supp.2d 179, 2010 U.S. Dist. LEXIS 29063 (2010), affirmed in part and vacated in part by, remanded by 670 F.3d 1244, 399 U.S. App. D.C. 314, 2011 U.S. App. LEXIS 20130 (2011).

§ 7-2502.05. Application signed under oath; fees.

(a) Each applicant (the president or chief executive in the case of an organization) shall sign an oath or affirmation attesting to the truth of all the information required by §§ 7-2502.03 or § 7-2502.07a.

(b) Each application required by this subchapter shall be accompanied by a nonrefundable fee to be established by the Mayor; provided, that such fee shall, in the judgment of the Mayor, reimburse the District for the cost of services provided under this subchapter.

(Sept. 24, 1976, D.C. Law 1-85, title II, § 205, 23 DCR 2464; Mar. 31, 2009, D.C. Law 17-372, § 3(f), 56 DCR 1365.)

Prior Codifications. — 1981 Ed., § 6-2315. 1973 Ed., § 6-1815.

Effect of amendments. — D.C. Law 17-372, in subsec. (a), substituted “§§ 7-2502.03 or § 7-2502.07a” for “§ 7-2502.03”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 3(f) of Firearms Registration Emergency Amendment Act of 2008 (D.C. Act 17-651, January 6, 2009, 56 DCR 911).

For temporary (90 day) amendment of section, see § 2(f) of Firearms Emergency Amendment Act of 2012 (D.C. Act 19-352, May 11, 2012, 59 DCR 5116).

For temporary (90 day) amendment of section, see § 2(f) of the Firearms Amendments Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-394, July 18, 2012, 59 DCR 8694).

Legislative history of Law 1-85. — For legislative history of D.C. Law 1-85, see Historical and Statutory Notes following § 7-2501.01.

Legislative history of Law 17-372. — For Law 17-372, see notes following § 7-2501.01.

Delegation of Authority. — Delegation of Authority pursuant to D.C. Law 1-85, the Firearms Control Regulation Act of 1975

§ 7-2502.06. Time for filing registration applications.

(a) An application for a registration certificate shall be filed (and a registration certificate issued) prior to taking possession of a firearm from a licensed dealer or from any person or organization holding a registration certificate therefor. In all other cases, an application for registration shall be filed immediately after a firearm is brought into the District. It shall be deemed compliance with the preceding sentence if such person personally communicates with the Metropolitan Police Department (as determined by the Chief to be sufficient) and provides such information as may be demanded; provided, that such person files an application for a registration certificate within 48 hours after such communication.

(b) Any firearm validly registered under prior regulations must be registered pursuant to this unit in accordance with procedures to be promulgated by

the Chief. An application to register such firearm shall be filed pursuant to this unit within 60 days of September 24, 1976.

(Sept. 24, 1976, D.C. Law 1-85, title II, § 206, 23 DCR 2464; Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780.)

Section references. — This section is referred to in § 7-2502.03.

Prior Codifications. — 1981 Ed., § 6-2316. 1973 Ed., § 6-1816.

Emergency legislation. — For temporary (90 day) repeal of section, see § 2(g) of Firearms Emergency Amendment Act of 2012 (D.C. Act 19-352, May 11, 2012, 59 DCR 5116).

For temporary (90 day) repeal of section, see § 2(g) of the Firearms Amendments Congress-

sional Review Emergency Amendment Act of 2012 (D.C. Act 19-394, July 18, 2012, 59 DCR 8694).

Legislative history of Law 1-85. — For legislative history of D.C. Law 1-85, see Historical and Statutory Notes following § 7-2501.01.

Legislative history of Law 2-62. — For legislative history of D.C. Law 2-62, see Historical and Statutory Notes following § 7-2501.01.

CASE NOTES

ANALYSIS

Equal protection.

In general.

Validity.

Equal protection.

The Firearms Control Act constitutes an exercise of police power of Council of District of Columbia; such legislative action need have only a rational basis to overcome an equal protection attack. D.C. Code §§ 6-1801 to 6-1880; U.S. Const. Amend. 14. *Fesjian v. Jefferson*, 399 A.2d 861, 1979 D.C. App. LEXIS 298 (1979).

In general.

Firearms Control Act of 1975 bars anyone from receiving, possessing, or having under his or her control any firearm or destructive device unless it is registered, and such Act makes unregistrable certain firearms. D.C. Code §§ 6-1801 et seq., 6-1875. *Kuhn v. Cissel*, 409 A.2d 182, 1979 D.C. App. LEXIS 506 (1979).

Under Firearms Control Act of 1975, application for registration certificate must be filed within 48 hours of bringing firearm into the District of Columbia. D.C. Code § 6-1816. *Kuhn v. Cissel*, 409 A.2d 182, 1979 D.C. App. LEXIS 506 (1979).

Provision within Firearms Control Regulations Act of 1975 is intended to allow both residents and nonresidents of District of Columbia to participate in recreational firearm-related activity so long as their firearms are validly registered in their respective jurisdictions and also meet local safety criteria. D.C. Code § 6-1811(b)(3). *McIntosh v. Washington*, 395 A.2d 744, 1978 D.C. App. LEXIS 365 (1978).

Firearms Control Regulations Act of 1975 would not prohibit company from selling handguns to qualified residents, but such sales

would be subject to District of Columbia Council's authority to regulate conduct of dealers in dangerous or deadly weapons. D.C. Code §§ 6-1811(a), (a)(1), 6-1852, 47-2340. *McIntosh v. Washington*, 395 A.2d 744, 1978 D.C. App. LEXIS 365 (1978).

Validity.

Firearms Control Regulations Act of 1975 is not unconstitutionally vague. *McIntosh v. Washington*, 395 A.2d 744, 1978 D.C. App. LEXIS 365 (1978).

Firearms Control Regulations Act of 1975 is not antithetical to Administrative Procedure Act. D.C. Code §§ 1-1509, 6-1801 et seq., 6-1820(b), 6-1846(b), 6-1879. *McIntosh v. Washington*, 395 A.2d 744, 1978 D.C. App. LEXIS 365 (1978).

Phrase "brought into the district," within provision of Firearms Control Regulations Act of 1975 stating that firearms brought into District of Columbia must be immediately registered, does not refer to firearms packaged in their original shipping containers that are being transported in interstate commerce in a bona fide shipment; as so construed, the provision does not impose an unconstitutional burden on interstate commerce. D.C. Code § 6-1816(a). *McIntosh v. Washington*, 395 A.2d 744, 1978 D.C. App. LEXIS 365 (1978).

Home Rule Act's provision vesting legislative power in District of Columbia Council afforded Council authority to enact Firearms Control Regulations Act of 1975, notwithstanding Home Rule Act provision that Council was to have no authority to enact any act with respect to any provision of title of District of Columbia Code relating to criminal procedure or with respect to any provision of titles relating to crimes and treatment of prisoners during 24 months after members of Council first elected pursuant to such Act were to take office. D.C.

Code §§ 1-144(a), 1-147(a)(9), 6-1801 et seq., 22-101 et seq., 23-101 et seq., 24-103 et seq. McIntosh v. Washington, 395 A.2d 744, 1978 D.C. App. LEXIS 365 (1978).

§ 7-2502.07. Issuance of registration certificate; time period; corrections.

(a) Upon receipt of a properly executed application for registration certificate, the Chief, upon determining through inquiry, investigation, or otherwise, that the applicant is entitled and qualified under the provisions of this unit, thereto, shall issue a registration certificate. Each registration certificate shall be in duplicate and bear a unique registration certificate number and such other information as the Chief determines is necessary to identify the applicant and the firearm registered. The duplicate of the registration certificate shall be delivered to the applicant and the Chief shall retain the original.

(b) The Chief shall approve or deny an application for a registration certificate within a 60-day period beginning on the date the Chief receives the application, unless good cause is shown, including nonreceipt of information from sources outside the District government; provided, that in the case of an application to register a firearm validly registered under prior regulations, the Chief shall have 365 days after the receipt of such application to approve or deny such application. The Chief may hold in abeyance an application where there is a revocation proceeding pending against such person or organization.

(c) Upon receipt of a registration certificate, each applicant shall examine same to ensure that the information thereon is correct. If the registration certificate is incorrect in any respect, the person or organization named thereon shall return it to the Chief with a signed statement showing the nature of the error. The Chief shall correct the error, if it occurred through administrative error. In the event the error resulted from information contained in the application, the applicant shall be required to file an amended application setting forth the correct information, and a statement explaining the error in the original application. Each amended application shall be accompanied by a fee equal to that required for the original application.

(d) In the event the Chief learns of an error in a registration certificate other than as provided in subsection (c) of this section, he may require the holder to return the registration certificate for correction. If the error resulted from information contained in the application, the person or organization named therein shall be required to file an amended application as provided in subsection (c) of this section.

(e) Each registration certificate issued by the Chief shall be accompanied by a statement setting forth the registrant's duties under this unit.

(f) In the discretion of the Chief of Police, a registration certificate may be issued to a retired police officer who is a resident of the District of Columbia for a pistol and ammunition which conforms to the Metropolitan Police Department General Orders and policies.

(g) When the retired police officer ceases to be a resident of the District of Columbia the registration certificate expires.

(h) Nothing in this unit shall create an entitlement to a registration certificate for a retired police officer. If the Chief of Police denies a retired police

officer's registration certificate application, the Chief of Police shall state the reasons for the denial in writing.

(i) The District of Columbia shall not incur any liability by reason of the issuance or denial of a certificate, nor for any use made of the registered firearm.

(Sept. 24, 1976, D.C. Law 1-85, title II, § 207, 23 DCR 2464; Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780; May 7, 1993, D.C. Law 9-266, § 2(c), 39 DCR 5676.)

Prior Codifications. — 1981 Ed., § 6-2317. 1973 Ed., § 6-1817.

Legislative history of Law 1-85. — For legislative history of D.C. Law 1-85, see Historical and Statutory Notes following § 7-2501.01.

Legislative history of Law 2-62. — For

legislative history of D.C. Law 2-62, see Historical and Statutory Notes following § 7-2501.01.

Legislative history of Law 9-266. — For legislative history of D.C. Law 9-266, see Historical and Statutory Notes following § 7-2502.01.

CASE NOTES

In general.

Absent an indication in applicable statute that failure of police chief to act within 365 days upon gun owners' applications for registration resulted in a divestment of chief's authority to deny applications, time period set out in such statute was advisory rather than mandatory, and thus such failure of police chief to act was not construed to constitute an automatic grant of applications by operation of law. D.C. Code § 6-1817(b). *Fesjian v. Jefferson*, 399 A.2d 861, 1979 D.C. App. LEXIS 298 (1979).

Under applicable District of Columbia Administrative Procedure Act provisions, when an administrator failed to act punctually on matter before him for consideration, District of

Columbia Court of Appeals was empowered solely to compel agency action unlawfully withheld, and thus even if gun owners who contended that police chief's failure to act within 365 days upon their applications for registration constituted an automatic grant of applications, had exhausted their administrative remedies and had not received any response from police department after one year, most advantageous result gun owners could exact from District of Columbia Court of Appeals would be order compelling police department to act on applications. D.C. Code § 1-1510(2); 5 U.S.C. § 706. *Fesjian v. Jefferson*, 399 A.2d 861, 1979 D.C. App. LEXIS 298 (1979).

§ 7-2502.07a. Expiration and renewal of registration certificate.

(a) Registration certificates shall expire 3 years after the date of issuance unless renewed in accordance with this section for subsequent 3-year periods.

(b) A registrant shall be eligible for renewal of registration of a firearm if the registrant continues to meet all of the initial registration requirements set forth in § 7-2502.03(a) and follows any procedures the Chief may establish by rule.

(c) For each renewal, a registrant shall submit a statement to the Metropolitan Police Department attesting to:

- (1) Possession of the registered firearm;
- (2) The registrant's address; and

(3) The registrant's continued compliance with all registration requirements set forth in § 7-2502.03(a).

(d) A registrant shall submit to a background check once every 6 years to confirm that the registrant continues to qualify for registration under § 7-2502.03(a).

(e)(1) The Metropolitan Police Department shall mail a renewal notice to each registrant at least 90 days prior to the expiration of the registration certificate.

(2) A renewal application shall be received by the Metropolitan Police Department at least 60 days prior to the expiration of the current registration certificate to ensure timely renewal.

(3) It is the duty of the registrant to timely renew a registration before its expiration date and a failure of the Metropolitan Police Department to mail or the registrant to receive the notice required under paragraph (1) of this subsection shall not prevent a registration from expiring as of that date.

(f) An applicant for the renewal of a registration certificate may be charged a reasonable fee to cover the administrative costs incurred by the Metropolitan Police Department in connection with the renewal.

(g) The Chief shall establish, by rule, a method for conducting the renewal of registrations for all firearms registered prior to March 31, 2009. The renewals of all firearms registered prior to March 31, 2009, shall be completed within 3 years of March 31, 2009.

(Sept. 24, 1976, D.C. Law 1-85, title II, § 207a, as added Mar. 31, 2009, D.C. Law 17-372, § 3(g), 56 DCR 1365; June 3, 2011, D.C. Law 18-377, § 2(b), 58 DCR 1174.)

Effect of amendments. — D.C. Law 18-377 substituted “§ 7-2502.03(a)” for “§ 7-2502.03”.

Emergency legislation. — For temporary (90 day) addition, see § 3(g) of Firearms Registration Emergency Amendment Act of 2008 (D.C. Act 17-651, January 6, 2009, 56 DCR 911).

For temporary (90 day) amendment of section, see § 502(b) of Public Safety Legislation Sixty-Day Layover Emergency Amendment Act of 2010 (D.C. Act 18-693, January 18, 2011, 58 DCR 640).

For temporary (90 day) amendment of section, see § 502(b) of Public Safety Legislation Sixty-Day Layover Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-45, April 20, 2011, 58 DCR 3701).

For temporary (90 day) amendment of sec-

tion, see § 2 of Firearms Registration Renewal Emergency Amendment Act of 2012 (D.C. Act 19-324, March 18, 2012, 59 DCR 2258).

For temporary (90 day) amendment of section, see § 2(h) of Firearms Emergency Amendment Act of 2012 (D.C. Act 19-352, May 11, 2012, 59 DCR 5116).

For temporary (90 day) amendment of section, see § 2(h) of the Firearms Amendments Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-394, July 18, 2012, 59 DCR 8694).

Legislative history of Law 17-372. — For Law 17-372, see notes following § 7-2501.01.

Legislative history of Law 18-377. — For history of Law 18-377, see notes under § 7-2502.03.

§ 7-2502.08. Duties of registrants.

(a) Each person or organization holding a registration certificate (for purposes of this section, “registrant”) shall:

(1) Notify the Chief in writing of the loss, theft, or destruction of the registration certificate or of a registered firearm (including the circumstances, if known) immediately upon discovery of such loss, theft, or destruction;

(2) Notify the Chief in writing within 30 days of a change in the registrant’s name or address as it appears on the registration certificate;

(3) Notify the Chief in writing of the sale, transfer, or other disposition of the firearm within 2 business days of such sale, transfer, or other disposition. The notification shall include:

(A) The identification of the registrant, the firearm, and the serial number of the registration certificate;

(B) The name, address, and date of birth of the person to whom the firearm has been sold or transferred; and

(C) Whether the firearm was sold or how it was otherwise transferred or disposed of.

(b) Each registrant shall return to the Chief the registration certificate for any firearm which is lost, stolen, destroyed, sold, or otherwise transferred or disposed of, at the time the registrant notifies the Chief of such loss, theft, destruction, sale, transfer, or other disposition.

(c) Each registrant shall have in the registrant's possession, whenever in possession of a firearm, the registration certificate, or exact photocopy thereof, for such firearm, and exhibit the same upon the demand of a member of the Metropolitan Police Department, or other law enforcement officer.

(d) The duties set forth in subsections (a) through (c) of this section are in addition to any other requirements imposed by this unit or other applicable law.

(e)(1) A registrant shall be subject to a civil fine of \$100 for the first violation or omission of the duties and requirements imposed by this section.

(2) A registrant shall be subject to a civil fine of \$500 for the second violation or omission of the duties and requirements imposed by this section, a registrant's registration certificates shall be revoked, and the registrant shall be prohibited from possessing or registering any firearm for a period of 5 years.

(3) A registrant shall be subject to a civil fine of \$1,000 for the third violation or omission of the duties and requirements imposed by this section, a registrant's registration certificates shall be revoked, and the registrant shall be prohibited from possessing or registering any firearm.

(4) For the purposes of this subsection, "a violation or omission" that applies to multiple firearms shall constitute a single violation or omission if the violation or omission pertaining to each firearm arose from the same occurrence.

(5) The penalties prescribed in § 7-2507.06 shall not apply to a violation or omission of the duties and requirements imposed by this section.

(Sept. 24, 1976, D.C. Law 1-85, title II, § 208, 23 DCR 2464; June 3, 2011, D.C. Law 18-377, § 2(c), 58 DCR 1174.)

Cross references. — Applicability to private operator, see § 24-261.02a.

Section references. — This section is referred to in § 7-2502.09.

Prior Codifications. — 1981 Ed., § 6-2318. 1973 Ed., § 6-1818.

Effect of amendments. — D.C. Law 18-377 rewrote the section, which formerly read:

"Each person and organization holding a registration certificate, in addition to any other requirements imposed by this unit, or the acts of Congress, shall:

"(1) Notify the Chief in writing of:

"(A) The loss, theft, or destruction of the

registration certificate or of a registered firearm (including the circumstances, if known) immediately upon discovery of such loss, theft, or destruction;

"(B) A change in any of the information appearing on the registration certificate or required by § 7-2502.03;

"(C) The sale, transfer or other disposition of the firearm not less than 48 hours prior to delivery, pursuant to such sale, transfer or other disposition, including:

"(i) Identification of the registrant, the firearm and the serial number of the registration certificate;

“(ii) The name, residence, and business address and date of birth of the person to whom the firearm has been sold or transferred; and

“(iii) Whether the firearm was sold or how it was otherwise transferred or disposed of.

“(2) Return to the Chief, the registration certificate for any firearm which is lost, stolen, destroyed, or otherwise transferred or disposed of, at the time he notifies the Chief of such loss, theft, destruction, sale, transfer, or other disposition.

“(3) Have in his possession, whenever in possession of a firearm, the registration certificate for such firearm, and exhibit the same upon the demand of a member of the Metropolitan Police Department, or other law enforcement officer.”

Emergency legislation. — For temporary (90 day) amendment of section, see § 502(c) of Public Safety Legislation Sixty-Day Layover Emergency Amendment Act of 2010 (D.C. Act 18-693, January 18, 2011, 58 DCR 640).

For temporary (90 day) amendment of section, see § 502(c) of Public Safety Legislation Sixty-Day Layover Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-45, April 20, 2011, 58 DCR 3701).

For temporary (90 day) amendment of section heading, see § 2(i) of Firearms Emergency Amendment Act of 2012 (D.C. Act 19-352, May 11, 2012, 59 DCR 5116).

For temporary (90 day) amendment of section heading, see § 2(i) of the Firearms Amendments Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-394, July 18, 2012, 59 DCR 8694).

Legislative history of Law 1-85. — For legislative history of D.C. Law 1-85, see Historical and Statutory Notes following § 7-2501.01.

Legislative history of Law 18-377. — For history of Law 18-377, see notes under § 7-2502.03.

§ 7-2502.09. Revocation of registration certificate.

(a) A registration certificate shall be revoked if:

(1) Any of the criteria in § 7-2502.03(a) are not currently met;

(2) The registered firearm has become an unregistrable firearm under the terms of § 7-2502.02, or a destructive device; or

(3) The information furnished to the Chief on the application for a registration certificate proves to be intentionally false.

(4) Repealed.

(b) Repealed.

(Sept. 24, 1976, D.C. Law 1-85, title II, § 209, 23 DCR 2464; Mar. 31, 2009, D.C. Law 17-372, § 3(h), 56 DCR 1365; June 3, 2011, D.C. Law 18-377, § 2(d), 58 DCR 1174.)

Cross references. — Applicability to private operator, see § 24-261.02a.

Prior Codifications. — 1981 Ed., § 6-2319. 1973 Ed., § 6-1819.

Effect of amendments. — D.C. Law 17-372 designated subsec. (a); in subsec. (a), inserted “or” at the end of par. (2), substituted a period for “; and” at the end of par. (3), and repealed par. (4); and added subsec. (b). Prior to repeal, par. (4) of subsec. (a) read as follows: “(4) There is a violation or omission of the duties, obligations or requirements imposed by § 7-2502.08.”

D.C. Law 18-377, in subsec. (a)(1), substituted “§ 7-2502.03(a)” for “§ 7-2502.03”; and rewrote subsec. (b).

Emergency legislation. — For temporary (90 day) amendment of section, see § 3(h) of Firearms Registration Emergency Amendment Act of 2008 (D.C. Act 17-651, January 6, 2009, 56 DCR 911).

For temporary (90 day) amendment of section, see § 502(d) of Public Safety Legislation Sixty-Day Layover Emergency Amendment Act of 2010 (D.C. Act 18-693, January 18, 2011, 58 DCR 640).

For temporary (90 day) amendment of section, see § 502(d) of Public Safety Legislation Sixty-Day Layover Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-45, April 20, 2011, 58 DCR 3701).

Legislative history of Law 1-85. — For legislative history of D.C. Law 1-85, see Historical and Statutory Notes following § 7-2501.01.

Legislative history of Law 17-372. — For Law 17-372, see notes following § 7-2501.01.

Legislative history of Law 18-377. — For history of Law 18-377, see notes under § 7-2502.03.

§ 7-2502.10. Procedure for denial and revocation of registration certificate.

(a) If it appears to the Chief that an application for a registration certificate should be denied or that a registration certificate should be revoked, the Chief shall notify the applicant or registrant of the proposed denial or revocation, briefly stating the reason or reasons therefor. Service may be made by delivering a copy of the notice to the applicant or registrant personally, or by leaving a copy thereof at the place of residence identified on the application or registration with some person of suitable age and discretion then residing therein, or by mailing a copy of the notice first class mail, postage prepaid, to the residence address identified on the application or certificate. In the case of an organization, service may be made upon the president, chief executive, or other officer, managing agent or person authorized by appointment or law to receive such notice as described in the preceding sentence at the business address of the organization identified in the application or registration certificate. The person serving the notice shall make proof thereof by preparing an affidavit identifying the person served and stating the time, place, and manner of service. The applicant or registrant shall have 15 days from the date the notice is served in which to submit further evidence in support of the application or qualifications to continue to hold a registration certificate, as the case may be; provided, that if the applicant does not make such a submission within 15 days from the date of service, the applicant or registrant shall be deemed to have conceded the validity of the reason or reasons stated in the notice, and the denial or revocation shall become final.

(b) Within 10 days of the date upon which the Chief receives such a submission, he shall serve upon the applicant or registrant in the manner specified in subsection (a) of this section notice of his final decision. The Chief's decision shall become effective at the expiration of the time within which to file a notice of appeal pursuant to the District of Columbia Administrative Procedure Act (§ 2-501 et seq.) or, if such a notice of appeal is filed, at the time the final order or judgment of the District of Columbia Court of Appeals becomes effective.

(c) Within 7 days of a decision unfavorable to the applicant or registrant becoming final, the applicant or registrant shall:

(1) Peaceably surrender to the Chief the firearm for which the registration certificate was revoked in the manner provided in § 7-2507.05; or

(2) Lawfully remove such firearm from the District for so long as he has an interest in such firearm; or

(3) Otherwise lawfully dispose of his interest in such firearm.

(d) If a firearm is in the possession of the Chief, the Chief may maintain possession of the firearm for which the registrant is temporarily or permanently prohibited from having lawful possession until final disposition of the matter.

(Sept. 24, 1976, D.C. Law 1-85, title II, § 210, 23 DCR 2464; Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780; Mar. 31, 2009, D.C. Law 17-372, § 3(i), 56 DCR 1365.)

Section references. — This section is referred to in §§ 7-2504.06, 7-2505.01, and 7-2507.05.

Prior Codifications. — 1981 Ed., § 6-2320. 1973 Ed., § 6-1820.

Effect of amendments. — D.C. Law 17-372 rewrote subsec. (a); and added subsec. (d).

Emergency legislation. — For temporary (90 day) amendment of section, see § 3(i) of Firearms Registration Emergency Amendment

Act of 2008 (D.C. Act 17-651, January 6, 2009, 56 DCR 911).

Legislative history of Law 1-85. — For legislative history of D.C. Law 1-85, see Historical and Statutory Notes following § 7-2501.01.

Legislative history of Law 2-62. — For legislative history of D.C. Law 2-62, see Historical and Statutory Notes following § 7-2501.01.

Legislative history of Law 17-372. — For Law 17-372, see notes following § 7-2501.01.

CASE NOTES

Validity.

Even if statute, which provides three alternatives for disposition within seven days of a firearm denied registration, authorizes a “taking,” such statute is an exercise of legislative police power and not of eminent domain, and thus such statute does not provide for a taking of property of a gun owner denied registration without just compensation in violation of Fifth Amendment. D.C. Code § 6-1820(c); U.S. Const. Amend. 5. *Fesjian v. Jefferson*, 399 A.2d 861, 1979 D.C. App. LEXIS 298 (1979).

Home Rule Act’s provision vesting legislative power in District of Columbia Council afforded Council authority to enact Firearms Control Regulations Act of 1975, notwithstanding Home Rule Act provision that Council was to have no authority to enact any act with respect to any provision of title of District of Columbia

Code relating to criminal procedure or with respect to any provision of titles relating to crimes and treatment of prisoners during 24 months after members of Council first elected pursuant to such Act were to take office. D.C. Code §§ 1-144(a), 1-147(a)(9), 6-1801 et seq., 22-101 et seq., 23-101 et seq., 24-103 et seq. *McIntosh v. Washington*, 395 A.2d 744, 1978 D.C. App. LEXIS 365 (1978).

Firearms Control Regulations Act of 1975 is not unconstitutionally vague. *McIntosh v. Washington*, 395 A.2d 744, 1978 D.C. App. LEXIS 365 (1978).

Firearms Control Regulations Act of 1975 is not antithetical to Administrative Procedure Act. D.C. Code §§ 1-1509, 6-1801 et seq., 6-1820(b), 6-1846(b), 6-1879. *McIntosh v. Washington*, 395 A.2d 744, 1978 D.C. App. LEXIS 365 (1978).

§ 7-2502.11. Information prohibited from use as evidence in criminal proceedings.

No information obtained from a person under this subchapter or retained by a person in order to comply with any section of this subchapter, shall be used as evidence against such person in any criminal proceeding with respect to a violation of this unit, occurring prior to or concurrently with the filing of the information required by this subchapter; provided, that this section shall not apply to any violation of § 22-2402, or § 7-2507.04.

(Sept. 24, 1976, D.C. Law 1-85, title II, § 211, 23 DCR 2464; Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780; Aug. 2, 1983, D.C. Law 5-24, § 13, 30 DCR 3341.)

Prior Codifications. — 1981 Ed., § 6-2321. 1973 Ed., § 6-1821.

Legislative history of Law 1-85. — For legislative history of D.C. Law 1-85, see Historical and Statutory Notes following § 7-2501.01.

Legislative history of Law 2-62. — For legislative history of D.C. Law 2-62, see Historical and Statutory Notes following § 7-2502.01.

Legislative history of Law 5-24. — Law

5-24, the “Technical and Clarifying Amendments Act of 1983,” was introduced in Council and assigned Bill No. 5-169, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 10, 1983, and May 24, 1983, respectively. Signed by the Mayor on June 9, 1983, it was assigned Act No. 5-41 and transmitted to both Houses of Congress for its review.

§ 7-2502.12. Definition of self-defense sprays.

For the purposes of §§ 7-2502.12 through 7-2502.14, the term:

“Self-defense spray” means a mixture of a lacrimator including chloroacetophenone, alpha-chloroacetophenone, phenylchloromethylketone, ortho-chlorobenazalm-alononitrile or oleoresin capsicum.

(Sept. 24, 1976, D.C. Law 1-85, title II, § 212, as added Mar. 17, 1993, D.C. Law 9-244, § 2, 40 DCR 647; May 16, 1995, D.C. Law 10-255, § 10(a), 41 DCR 5193.)

Prior Codifications. — 1981 Ed., § 6-2322.

Legislative history of Law 9-244. — Law 9-244, the “Legalization of Self-Defense Sprays Amendment Act of 1992,” was introduced in Council and assigned Bill No. 9-587, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 1, 1992, and December 15, 1992, respectively. Signed by the Mayor on January 5, 1993, it was assigned Act No. 9-382 and transmitted to both Houses of Congress for its review. D.C. Law 9-244 became effective on March 17, 1993.

Legislative history of Law 10-255. — Law 10-255, the “Technical Amendments Act of 1994,” was introduced in Council and assigned Bill No. 10-673, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10-255 became effective May 16, 1995.

§ 7-2502.13. Possession of self-defense sprays.

(a) Notwithstanding the provisions of § 7-2501.01(7)(C), a person 18 years of age or older may possess and use a self-defense spray in the exercise of reasonable force in defense of the person or the person’s property only if it is propelled from an aerosol container, labeled with or accompanied by clearly written instructions as to its use, and dated to indicate its anticipated useful life.

(b) No person shall possess a self-defense spray which is of a type other than that specified in §§ 7-2502.12 to 7-2502.14.

(Sept. 24, 1976, D.C. Law 1-85, title II, § 213, as added Mar. 17, 1993, D.C. Law 9-244, § 2, 40 DCR 647; May 16, 1995, D.C. Law 10-255, § 10(b), 41 DCR 5193.)

Section references. — This section is referred to in § 7-2502.12.

Prior Codifications. — 1981 Ed., § 6-2323.

Legislative history of Law 9-244. — For legislative history of D.C. Law 9-244, see Historical and Statutory Notes following § 7-2502.12.

Legislative history of Law 10-255. — For legislative history of D.C. Law 10-255, see Historical and Statutory Notes following § 7-2502.12.

§ 7-2502.14. Registration of self-defense sprays.

(a) A person 18 years of age or older must register the self-defense spray at the time of purchase by completing a standard registration form.

(b) The vendor must forward the registration form to the Metropolitan Police Department.

(Sept. 24, 1976, D.C. Law 1-85, title II, § 214, as added Mar. 17, 1993, D.C. Law 9-244, § 2, 40 DCR 647.)

Section references. — This section is referred to in §§ 7-2502.12 and 7-2502.13.

Prior Codifications. — 1981 Ed., § 6-2324.

Legislative history of Law 9-244. — For

legislative history of D.C. Law 9-244, see Historical and Statutory Notes following § 7-2502.12.

Subchapter III. Estates Containing Firearms.

§ 7-2503.01. Rights and responsibilities of executors and administrators.

(a) The executor or administrator of an estate containing a firearm shall notify the Chief of the death of the decedent within 30 days of his appointment or qualification, whichever is earlier.

(b) Until the lawful distribution of such firearm to an heir or legatee or the lawful sale, transfer, or disposition of the firearm by the estate, the executor or administrator of such estate shall be charged with the duties and obligations which would have been imposed by this unit upon the decedent, if the decedent were still alive; provided, that such executor or administrator shall not be liable to the criminal penalties of § 7-2507.06.

(Sept. 24, 1976, D.C. Law 1-85, title III, § 301, 23 DCR 2464; Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780; Aug. 2, 1983, D.C. Law 5-19, § 3, 30 DCR 3328.)

Prior Codifications. — 1981 Ed., § 6-2331. 1973 Ed., § 6-1831.

Legislative history of Law 1-85. — For legislative history of D.C. Law 1-85, see Historical and Statutory Notes following § 7-2501.01.

Legislative history of Law 2-62. — For legislative history of D.C. Law 2-62, see Historical and Statutory Notes following § 7-2501.01.

Subchapter IV. Licensing of Firearms Businesses.

§ 7-2504.01. Manufacture of firearms, destructive devices or ammunition prohibited; requirement for dealer's license.

(a) No person or organization shall manufacture any firearm, destructive device or parts thereof, or ammunition, within the District; provided, that persons holding registration certificates may engage in hand loading, reloading, or custom loading ammunition for his registered firearms; provided further, that such person may not hand load, reload, or custom load ammunition for others.

(b) No person or organization shall engage in the business of selling, purchasing, or repairing any firearm, destructive device, parts therefor, or ammunition, without first obtaining a dealer's license, and no licensee shall engage in the business of selling, purchasing, or repairing firearms which are unregistrable under § 7-2502.02, destructive devices, or parts therefor,

except pursuant to a valid work or purchase order, for those persons specified in § 7-2502.01(b)(1).

(c) Any license issued pursuant to this section shall be issued by the Metropolitan Police Department as a Public Safety endorsement to a basic business license under the basic business license system as set forth in subchapter I-A of Chapter 28 of Title 47.

(Sept. 24, 1976, D.C. Law 1-85, title IV, § 401, 23 DCR 2464; Apr. 20, 1999, D.C. Law 12-261, § 2003(k)(1), 46 DCR 3142; Oct. 28, 2003, D.C. Law 15-38, § 3(i)(1), 50 DCR 6913.)

Prior Codifications. — 1981 Ed., § 6-2341. 1973 Ed., § 6-1841.

Effect of amendments. — D.C. Law 15-38, in subsec. (c), substituted “Public Safety endorsement to a basic business license under the basic” for “Class A Public Safety endorsement to a master business license under the master”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 3(i)(1) of Streamlining Regulation Emergency Act of 2003 (D.C. Act 15-145, August 11, 2003, 50 DCR 6896).

Legislative history of Law 1-85. — For legislative history of D.C. Law 1-85, see Historical and Statutory Notes following § 7-2501.01.

Legislative history of Law 12-261. — Law 12-261, the “Second Omnibus Regulatory Reform Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-615, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615 and transmitted to both Houses of Congress for its review. D.C. Law 12-261 became effective on April 20, 1999.

Legislative history of Law 15-38. — For Law 15-38, see notes following § 7-732.

CASE NOTES

In general.

District of Columbia’s Assault Weapon Manufacturing Strict Liability Act (SLA), conferring on individuals injured by gun users a right of action for strict liability in tort against gun manufacturers and distributors, did not discriminate against interstate commerce, as element of Commerce Clause analysis; there was no economic protectionism, since there were no

legal manufacturers, distributors, or sellers of assault weapons and machine guns in District of Columbia. *District of Columbia v. Beretta, U.S.A., Corp.*, 872 A.2d 633, 2005 D.C. App. LEXIS 206 (2005), writ of certiorari denied by 546 U.S. 928, 126 S. Ct. 399, 163 L. Ed. 2d 277, 2005 U.S. LEXIS 7205, 74 U.S.L.W. 3212 (2005).

§ 7-2504.02. Qualifications for dealer’s license; application; fee.

(a) Any person eligible to register a firearm under this unit and who, if a registrant, has not previously failed to perform any of the duties imposed by this unit; and, any person eligible under the acts of Congress to engage in such business, may obtain a dealer’s license, or a renewal thereof, which shall be valid for a period of not more than 1 year from the date of issuance. The license required by this unit, shall be in addition to any other license or licensing procedure required by law.

(b) Each application for a dealer’s license and each application for renewal thereof shall be made on a form prescribed by the Chief, shall be sworn to or affirmed by the applicant, and shall contain:

(1) The information required by § 7-2502.03(a);

(2) The address where the applicant conducts or intends to conduct his business;

(3) Whether the applicant, prior to September 24, 1976, held a license to deal in deadly weapons in the District; and

(4) Such other information as the Chief may require, including fingerprints and photographs of the applicant, to carry out the purposes of this unit.

(c) Each application for a dealer's license, or renewal shall be accompanied by a fee established by the Mayor; provided, that such fee shall in the judgment of the Mayor, reimburse the District for the cost of services provided under this subchapter.

(d) Any license issued pursuant to this section shall be issued as a Public Safety endorsement to a basic business license under the basic business license system as set forth in subchapter I-A of Chapter 28 of Title 47.

(Sept. 24, 1976, D.C. Law 1-85, title IV, § 402, 23 DCR 2464; Apr. 20, 1999, D.C. Law 12-261, § 2003(k)(2), 46 DCR 3142; Oct. 28, 2003, D.C. Law 15-38, § 3(i)(2), 50 DCR 6913.)

Section references. — This section is referred to in § 7-2504.04.

Prior Codifications. — 1981 Ed., § 6-2342. 1973 Ed., § 6-1842.

Effect of amendments. — D.C. Law 15-38, in subsec. (c), substituted "Public Safety endorsement to a basic business license under the basic" for "Class A Public Safety endorsement to a master business license under the master".

Emergency legislation. — For temporary (90 day) amendment of section, see § 3(i)(2) of Streamlining Regulation Emergency Act of 2003 (D.C. Act 15-145, August 11, 2003, 50 DCR 6896).

Legislative history of Law 1-85. — For legislative history of D.C. Law 1-85, see Historical and Statutory Notes following § 7-2501.01.

Legislative history of Law 12-261. — For legislative history of D.C. Law 12-261, see Historical and Statutory Notes following § 7-2504.01.

Legislative history of Law 15-38. — For Law 15-38, see notes following § 7-732.

Delegation of Authority. — Delegation of Authority pursuant to D.C. Law 1-85, the Firearms Control Regulation Act of 1975

§ 7-2504.03. Issuance of dealer's license; time period; corrections.

(a) Upon receipt of a properly executed application for a dealer's license, or renewal thereof, the Chief, upon determining through further inquiry, investigation, or otherwise, that the applicant is entitled and qualified under the provisions of this unit thereto, shall issue a dealer's license. Each dealer's license shall be in duplicate and bear a unique dealer's license number, and such other information as the Chief determines is necessary to identify the applicant and premises. The duplicate of the dealer's license shall be delivered to the applicant and the Chief shall retain the original.

(b) The Chief shall approve or deny an application for a registration certificate within a 60-day period beginning on the date the Chief receives the application, unless good cause is shown, including nonreceipt of information from sources outside the District government. The Chief may hold in abeyance an application where there is any firearms revocation proceeding pending against such person.

(c) Upon receipt of a dealer's license, each applicant shall examine the same to ensure that the information thereon is correct. If the dealer's license is incorrect in any respect, the person named thereon shall return the same to the Chief with a signed statement showing the nature of the error. The Chief shall

correct the error, if it occurred through administrative error. In the event the error resulted from information contained in the application, the applicant shall be required to file an amended application explaining the error in the original application. Each amended application shall be accompanied by a fee equal to that required for the original application.

(d) In the event the Chief learns of an error in a dealer's license, other than as provided in subsection (c) of this section, he may require the holder to return the dealer's license for correction. If the error resulted from information contained in the application, the person named therein shall be required to file an amended application as provided in subsection (c) of this section.

(e) Each dealer's license issued by the Chief shall be accompanied by a statement setting forth a dealer's duties under this unit.

(Sept. 24, 1976, D.C. Law 1-85, title IV, § 403, 23 DCR 2464.)

Prior Codifications. — 1981 Ed., § 6-2343. legislative history of D.C. Law 1-85, see Historical and Statutory Notes following § 7-2501.01.
1973 Ed., § 6-1843.

Legislative history of Law 1-85. — For

§ 7-2504.04. Duties of licensed dealers; records required.

(a) Each person holding a dealer's license, in addition to any other requirements imposed by this unit, the acts of Congress, and other law, shall:

- (1) Display the dealer's license in a conspicuous place on the premises;
- (2) Notify the Chief in writing:

(A) Of the loss, theft, or destruction of the dealer's license (including the circumstances, if known) immediately upon the discovery of such loss, theft, or destruction or of the loss, theft, or destruction of any firearms or ammunition in the dealer's inventory;

(B) Of a change in any of the information appearing on the dealer's license or required by § 7-2504.02 immediately upon the occurrence of any such change;

(3) Keep at the premises identified in the dealer's license a true and current record in book form of:

(A) The name, address, home phone, and date of birth of each employee handling firearms, ammunition, or destructive devices;

(B) Each firearm or destructive device received into inventory or for repair including the:

(i) Serial number, caliber, make, model, manufacturer's number (if any), dealer's identification number (if any), registration certificate number (if any) of the firearm, and similar descriptive information for destructive devices;

(ii) Name, address, and dealer's license number (if any) of the person or organization from whom the firearm or destructive device was purchased or otherwise received;

(iii) Consideration given for the firearm or destructive device, if any;

(iv) Date and time received by the licensee and in the case of repair, returned to the person holding the registration certificate; and

(v) Nature of the repairs made;

(C) Each firearm or destructive device sold or transferred including the:

(i) Serial number, caliber, make, model, manufacturer's number or dealer's identification number, and registration certificate number (if any) of the firearm or similar information for destructive devices;

(ii) Name, address, registration certificate number or license number (if any) of the person or organization to whom transferred;

(iii) The consideration for transfer; and

(iv) Time and date of delivery of the firearm or destructive device to the transferee;

(D) Ammunition received into inventory including the:

(i) Brand and number of rounds of each caliber or gauge;

(ii) Name, address, and dealer's license or registration number (if any) of the person or organization from whom received;

(iii) Consideration given for the ammunition; and

(iv) Date and time of the receipt of the ammunition;

(E) Ammunition sold or transferred including:

(i) Brand and number of rounds of each caliber or gauge;

(ii) Name, address and dealer's license number (if any) of the person or organization to whom sold or transferred;

(iii) If the purchaser or transferee is not a licensee, the registration certificate number of the firearm for which the ammunition was sold or transferred;

(iv) The consideration for the sale and transfer; and

(v) The date and time of sale or transfer.

(b) The records required by subsection (a) of this section shall upon demand be exhibited during normal business hours to any member of the Metropolitan Police Department. In addition, the records required by subsection (a) of this section shall be submitted upon demand with the dealer's application for license renewal.

(c) Each person holding a dealer's license shall, when required by the Chief in writing, submit on a form and for the periods of time specified, any record information required to be maintained by subsection (a) of this section, and any other information reasonably obtainable therefrom.

(Sept. 24, 1976, D.C. Law 1-85, title IV, § 404, 23 DCR 2464; Mar. 31, 2009, D.C. Law 17-372, § 3(j), 56 DCR 1365.)

Section references. — This section is referred to in § 7-2504.05.

Prior Codifications. — 1981 Ed., § 6-2344. 1973 Ed., § 6-1844.

Effect of amendments. — D.C. Law 17-372, in subsec. (a)(2)(A), substituted "destruction or of the loss, theft, or destruction of any firearms or ammunition in the dealer's inventory;" for "destruction;"; and, in subsec. (b), added the second sentence.

Emergency legislation. — For temporary (90 day) amendment of section, see § 3(j) of Firearms Registration Emergency Amendment Act of 2008 (D.C. Act 17-651, January 6, 2009, 56 DCR 911).

Legislative history of Law 1-85. — For legislative history of D.C. Law 1-85, see Historical and Statutory Notes following § 7-2501.01.

Legislative history of Law 17-372. — For Law 17-372, see notes following § 7-2501.01.

§ 7-2504.05. Revocation of dealer's license.

A dealer's license shall be revoked if:

(1) Any of the criteria in § 7-2504.04 is not currently met;

(2) The information furnished to the Chief on the application for a dealer's license proves to be intentionally false;

(3) There is a violation or omission of the duties, obligations, or requirements imposed by § 7-2504.04; or

(4) The license holder no longer meets any of the criteria required by this unit.

(Sept. 24, 1976, D.C. Law 1-85, title IV, § 405, 23 DCR 2464; Mar. 31, 2009, D.C. Law 17-372, § 3(k), 56 DCR 1365.)

Prior Codifications. — 1981 Ed., § 6-2345. 1973 Ed., § 6-1845.

Effect of amendments. — D.C. Law 17-372, in pars. (1) and (2), deleted “or” at the end; in par. (3), substituted “; or” for a period; and added par. (4).

Emergency legislation. — For temporary (90 day) amendment of section, see § 3(k) of Firearms Registration Emergency Amendment Act of 2008 (D.C. Act 17-651, January 6, 2009, 56 DCR 911).

For temporary (90 day) amendment of section, see § 2(j) of Firearms Emergency Amend-

ment Act of 2012 (D.C. Act 19-352, May 11, 2012, 59 DCR 5116).

For temporary (90 day) amendment of section, see § 2(j) of the Firearms Amendments Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-394, July 18, 2012, 59 DCR 8694).

Legislative history of Law 1-85. — For legislative history of D.C. Law 1-85, see Historical and Statutory Notes following § 7-2501.01.

Legislative history of Law 17-372. — For Law 17-372, see notes following § 7-2501.01.

§ 7-2504.06. Procedure for denial and revocation of dealer's license.

(a) If it appears to the Chief that an application for a dealer's license should be denied or that a dealer's license should be revoked, the Chief shall notify the applicant or registrant of the proposed denial or revocation briefly stating the reason or reasons therefor. Service may be made as provided for in § 7-2502.10(a). The applicant or dealer shall have 15 days from the date of service in which to submit further evidence in support of the application or qualifications to continue to hold a dealer's license, as the case may be; provided, that if the applicant or dealer does not make such a submission within 15 days from the date of service, the applicant or dealer shall be deemed to have conceded the validity of the reason or reasons stated in the notice, and the denial or revocation shall become final.

(b) Within 10 days of the date upon which the Chief receives such a submission, the Chief shall serve upon the applicant or registrant in the manner provided in § 7-2502.10(a) notice of his final decision. The Chief's decision shall become effective at the expiration of the time within which to file a notice of appeal pursuant to the District of Columbia Administrative Procedure Act (§ 2-501 et seq.) or, if such a notice of appeal is filed, at the time the final order or judgment of the District of Columbia Court of Appeals becomes effective.

(c) Within 45 days of a decision becoming effective, which is unfavorable to a licensee or to an applicant for a dealer's license, the licensee or applicant shall:

(1) If he is eligible to register firearms pursuant to this unit, register such firearms in his inventory as are capable of registration pursuant to this unit;

(2) Peaceably surrender to the Chief any firearms in his inventory which

he does not register, and all destructive devices in his inventory in the manner provided for in § 7-2507.05;

(3) Lawfully remove from the District any firearm in his inventory which he does not register and all destructive devices and ammunition in his inventory for so long as he has an interest in them; or

(4) Otherwise lawfully dispose of any firearms in his inventory which he does not register and all destructive devices and ammunition in his inventory.

(Sept. 24, 1976, D.C. Law 1-85, title IV, § 406, 23 DCR 2464; Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780.)

Prior Codifications. — 1981 Ed., § 6-2346. 1973 Ed., § 6-1846.

Legislative history of Law 1-85. — For legislative history of D.C. Law 1-85, see Historical and Statutory Notes following § 7-2501.01.

Legislative history of Law 2-62. — For legislative history of D.C. Law 2-62, see Historical and Statutory Notes following § 7-2501.01.

CASE NOTES

Validity.

Firearms Control Regulations Act of 1975 is not unconstitutionally vague. *McIntosh v. Washington*, 395 A.2d 744, 1978 D.C. App. LEXIS 365 (1978).

Firearms Control Regulations Act of 1975 is

not antithetical to Administrative Procedure Act. D.C. Code §§ 1-1509, 6-1801 et seq., 6-1820(b), 6-1846(b), 6-1879. *McIntosh v. Washington*, 395 A.2d 744, 1978 D.C. App. LEXIS 365 (1978).

§ 7-2504.07. Display of firearms or ammunition by dealers; security; employees of dealers.

(a) No licensed dealer shall display any firearm or ammunition in windows visible from a street or sidewalk. All firearms, destructive devices, and ammunition shall be kept at all times in a securely locked place affixed to the premises except when being shown to a customer, being repaired, or otherwise being worked on.

(b) No licensee shall knowingly employ any person in his establishment if such person would not be eligible to register a firearm under this unit.

(Sept. 24, 1976, D.C. Law 1-85, title IV, § 407, 23 DCR 2464.)

Prior Codifications. — 1981 Ed., § 6-2347. 1973 Ed., § 6-1847.

Legislative history of Law 1-85. — For

legislative history of D.C. Law 1-85, see Historical and Statutory Notes following § 7-2501.01.

CASE NOTES

In general.

Employee who kept an unregistered firearm in his office could not be held liable for death of robbery victim killed with employee's firearm, which was stolen during burglary of office, despite employee's violation of District of Columbia's firearm registration statute, since a purpose of preventing crimes by gun thieves

was not clearly enough indicated in firearm registration statute to warrant imposition of civil liability for intervening, independent criminal acts of third parties. D.C. Code 1981, § 6-2311(a). *Romero v. National Rifle Assn.*, 749 F.2d 77, 1984 U.S. App. LEXIS 16021 (C.A.D.C. 1984).

§ 7-2504.08. Identification number on firearm required before sale.

(a) No licensee shall sell or offer for sale any firearm which does not have imbedded into the metal portion of such firearm a unique manufacturer's identification number or serial number, unless the licensee shall have imbedded into the metal portion of such firearm a unique dealer's identification number.

(b) Beginning on January 1, 2013, no licensee shall sell or offer for sale any semiautomatic pistol manufactured on or after January 1, 2013, that is not microstamp-ready as required by and in accordance with § 7-2505.03.

(Sept. 24, 1976, D.C. Law 1-85, title IV, § 408, 23 DCR 2464; Mar. 31, 2009, D.C. Law 17-372, § 3(l), 56 DCR 1365; June 3, 2011, D.C. Law 18-377, § 2(e), 58 DCR 1174.)

Prior Codifications. — 1981 Ed., § 6-2348. 1973 Ed., § 6-1848.

Effect of amendments. — D.C. Law 17-372 designated subsec. (a); and added subsec. (b).

D.C. Law 18-377, in subsec. (b), substituted "January 1, 2013" for "January 1, 2011".

Emergency legislation. — For temporary (90 day) amendment of section, see § 3(l) of Firearms Registration Emergency Amendment Act of 2008 (D.C. Act 17-651, January 6, 2009, 56 DCR 911).

For temporary (90 day) amendment of section, see § 502(e) of Public Safety Legislation Sixty-Day Layover Emergency Amendment Act of 2010 (D.C. Act 18-693, January 18, 2011, 58 DCR 640).

For temporary (90 day) amendment of section, see § 502(e) of Public Safety Legislation Sixty-Day Layover Congressional Review

Emergency Amendment Act of 2011 (D.C. Act 19-45, April 20, 2011, 58 DCR 3701).

For temporary (90 day) amendment of section, see § 2(k) of Firearms Emergency Amendment Act of 2012 (D.C. Act 19-352, May 11, 2012, 59 DCR 5116).

For temporary (90 day) amendment of section, see § 2(k) of the Firearms Amendments Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-394, July 18, 2012, 59 DCR 8694).

Legislative history of Law 1-85. — For legislative history of D.C. Law 1-85, see Historical and Statutory Notes following § 7-2501.01.

Legislative history of Law 17-372. — For Law 17-372, see notes following § 7-2501.01.

Legislative history of Law 18-377. — For history of Law 18-377, see notes under § 7-2502.03.

§ 7-2504.09. Certain information obtained from or retained by dealers not to be used as evidence in criminal proceedings.

No information obtained from or retained by a licensed dealer to comply with this unit shall be used as evidence against such licensed dealer in any criminal proceeding with respect to a violation of this unit occurring prior to or concurrently with the filing of such information; provided, that this section shall not apply to any violation of § 22-2402, or of § 7-2507.04.

(Sept. 24, 1976, D.C. Law 1-85, title IV, § 409, 23 DCR 2464; Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780; Aug. 2, 1983, D.C. Law 5-24, § 13, 30 DCR 3341.)

Prior Codifications. — 1981 Ed., § 6-2349. 1973 Ed., § 6-1849.

Emergency legislation. — For temporary (90 day) addition of section, see § 2(l) of Fire-

arms Emergency Amendment Act of 2012 (D.C. Act 19-352, May 11, 2012, 59 DCR 5116).

For temporary (90 day) addition of section, see § 2(l) of the Firearms Amendments Con-

gressional Review Emergency Amendment Act of 2012 (D.C. Act 19-394, July 18, 2012, 59 DCR 8694).

Legislative history of Law 1-85. — For legislative history of D.C. Law 1-85, see Historical and Statutory Notes following § 7-2501.01.

Legislative history of Law 2-62. — For legislative history of D.C. Law 2-62, see Historical and Statutory Notes following § 7-2501.01.

Legislative history of Law 5-24. — For legislative history of D.C. Law 5-24, see Historical and Statutory Notes following § 7-2502.11.

Subchapter V. Sale and Transfer of Firearms, Destructive Devices, and Ammunition.

§ 7-2505.01. Sales and transfers prohibited.

No person or organization shall sell, transfer or otherwise dispose of any firearm, destructive device or ammunition in the District except as provided in § 7-2502.10(c), § 7-2505.02, or § 7-2507.05.

(Sept. 24, 1976, D.C. Law 1-85, title V, § 501, 23 DCR 2464; Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780.)

Prior Codifications. — 1981 Ed., § 6-2351. 1973 Ed., § 6-1851.

Legislative history of Law 1-85. — For legislative history of D.C. Law 1-85, see Historical and Statutory Notes following § 7-2501.01.

Legislative history of Law 2-62. — For legislative history of D.C. Law 2-62, see Historical and Statutory Notes following § 7-2501.01.

§ 7-2505.02. Permissible sales and transfers.

(a) Any person or organization eligible to register a firearm may sell or otherwise transfer ammunition or any firearm, except those which are unregistrable under § 7-2502.02, to a licensed dealer.

(b) Any licensed dealer may sell or otherwise transfer:

(1) Ammunition, excluding restricted pistol bullets, and any firearm or destructive device which is lawfully a part of such licensee's inventory, to any nonresident person or business licensed under the acts of Congress and the jurisdiction where such person resides or conducts such business;

(2) Ammunition, including restricted pistol bullets, and any firearm or destructive device which is lawfully a part of such licensee's inventory to:

(A) Any other licensed dealer;

(B) Any law enforcement officer or agent of the District or the United States of America when such officer or agent is on duty, and acting within the scope of his duties when acquiring such firearm, ammunition, or destructive device, if the officer or agent has in his possession a statement from the head of his agency stating that the item is to be used in such officer's or agent's official duties.

(c) Any licensed dealer may sell or otherwise transfer a firearm except those which are unregistrable under § 7-2502.02, to any person or organization possessing a registration certificate for such firearm; provided, that if the Chief denies a registration certificate, he shall so advise the licensee who shall thereupon: (1) withhold delivery until such time as a registration certificate is issued, or, at the option of the purchaser; (2) declare the contract null and void, in which case consideration paid to the licensee shall be returned to the

purchaser; provided further, that this subsection shall not apply to persons covered by subsection (b) of this section.

(d) Except as provided in subsections (b) and (e) of this section, no licensed dealer shall sell or otherwise transfer ammunition unless:

(1) The sale or transfer is made in person; and

(2) The purchaser exhibits, at the time of sale or other transfer, a valid registration certificate, or in the case of a nonresident, proof that the weapon is lawfully possessed in the jurisdiction where such person resides;

(3) The ammunition to be sold or transferred is of the same caliber or gauge as the firearm described in the registration certificate, or other proof in the case of nonresident; and

(4) The purchaser signs a receipt for the ammunition which (in addition to the other records required under this unit) shall be maintained by the licensed dealer for a period of 1 year from the date of sale.

(e) Any licensed dealer may sell ammunition to any person holding an ammunition collector's certificate on September 24, 1976; provided, that the collector's certificate shall be exhibited to the licensed dealer whenever the collector purchases ammunition for his collection; provided further, that the collector shall sign a receipt for the ammunition, which shall be treated in the same manner as that required under paragraph (4) of subsection (d) of this section.

(Sept. 24, 1976, D.C. Law 1-85, title V, § 502, 23 DCR 2464; Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780; Aug. 2, 1983, D.C. Law 5-19, § 3, 30 DCR 3328.)

Section references. — This section is referred to in § 7-2505.01.

Prior Codifications. — 1981 Ed., § 6-2352. 1973 Ed., § 6-1852.

Temporary Amendment of Section. — For temporary (225 day) provisions prohibiting the transfer by the Metropolitan Police Department of ammunition feeding devices, see § 2 of Prohibition on the Transfer of Firearms Temporary Act of 1995 (D.C. Law 11-35, September 8, 1995, law notification 42 DCR 5304).

Emergency legislation. — For temporary provisions prohibiting the transfer by the Metropolitan Police Department of ammunition feeding devices, see § 2 of the Prohibition on the Transfer of Firearms Emergency Act of

1995 (D.C. Act 11-58, May 18, 1995, 42 DCR 2574).

Legislative history of Law 1-85. — For legislative history of D.C. Law 1-85, see Historical and Statutory Notes following § 7-2501.01.

Legislative history of Law 2-62. — For legislative history of D.C. Law 2-62, see Historical and Statutory Notes following § 7-2501.01.

Legislative history of Law 5-19. — For legislative history of D.C. Law 5-19, see Historical and Statutory Notes following § 7-2501.01.

Editor's notes. — Prohibition on transfer of ammunition feeding devices: For provisions prohibiting the transfer by the Metropolitan Police Department of ammunition feeding devices, see § 4-191.

CASE NOTES

ANALYSIS

In general.
Validity.

In general.

Provisions within Firearms Control Regulations Act of 1975 would allow detective agency to furnish properly registered firearms to special police officers during duty hours and would allow commissioned special police officers of an organization, which arm such employees with

firearms during such employees' duty hours, to maintain their firearms in a loaded usable condition during duty hours. D.C. Code §§ 6-1811(a), (a)(1). *McIntosh v. Washington*, 395 A.2d 744, 1978 D.C. App. LEXIS 365 (1978).

Validity.

Firearms Control Regulations Act of 1975 is not unconstitutionally vague. *McIntosh v. Washington*, 395 A.2d 744, 1978 D.C. App. LEXIS 365 (1978).

§ 7-2505.03. Microstamping.

(a) For the purposes of the section, the term:

(1) “Firearms dealer” means a person or organization possessing a dealer’s license under authority of subchapter IV of this chapter.

(2) “Manufacturer” means any person in business to manufacture or assemble a firearm, for sale or distribution.

(3) “Microstamp-ready” means a semiautomatic pistol that is manufactured to produce a unique alpha-numeric or geometric code on at least 2 locations on each expended cartridge case that identifies the make, model, and serial number of the pistol.

(4) “Semiautomatic pistol” means a pistol capable of utilizing a portion of the energy of a firing cartridge to extract the fired cartridge case and automatically chamber the next round, and that requires a separate pull of the trigger to fire each successive round.

(b) Except as provided in subsection (c) of this section, beginning on January 1, 2013, a semiautomatic pistol shall be microstamp-ready if it is:

(1) Manufactured in the District of Columbia;

(2) Manufactured on or after January 1, 2013, and delivered or caused to be delivered by any manufacturer to a firearms dealer in the District of Columbia; or

(3) Manufactured on or after January 1, 2013, and sold, offered for sale, loaned, given, or transferred by a firearms dealer in the District of Columbia.

(c)(1) A semiautomatic pistol manufactured after January 1, 2013, that is not microstamp-ready and that was acquired outside of the District by a person who was not a District resident at the time of acquisition but who subsequently moved to the District shall be registered if the requirements of this unit are met, and may be sold, transferred, or given away; provided, that the pistol shall be sold, transferred, or given away only through a firearms dealer.

(2) If a firearms dealer lawfully acquires a microstamp-ready semiautomatic pistol that was originally purchased by a non-dealer resident of the District of Columbia, the firearms dealer shall not sell, offer for sale, loan, give, or transfer that pistol if he or she knows or reasonably should have known that the unique alphanumeric or geometric code associated with that pistol has been changed, altered, removed, or obliterated, excepting for normal wear.

(d)(1) Except as provided in paragraph (2) of this subsection, and except for normal wear, no person shall change, alter, remove, or obliterate the unique alpha-numeric or geometric code associated with that pistol.

(2) Replacing a firing pin that has been damaged or worn and is in need of replacement for the safe use of the semiautomatic pistol or for a legitimate sporting purpose shall not alone be evidence that someone has violated this subsection.

(e) Beginning January 1, 2013, a manufacturer that delivers a semiautomatic pistol, or causes a semiautomatic pistol to be delivered, to a firearms dealer for sale in the District of Columbia shall certify whether the pistol was manufactured on or after January 1, 2013, and, if it was, that:

(1) The semiautomatic pistol will produce a unique alpha-numeric code or a geometric code on each cartridge case that identifies the make, model, and

serial number of the semiautomatic pistol that expended the cartridge casing; and

(2) The manufacturer will supply the Chief with the make, model, and serial number of the semiautomatic pistol that expended the cartridge case, when presented with an alpha-numeric or geometric code from a cartridge case; provided, that the cartridge case was recovered as part of a legitimate law enforcement investigation.

(f) The Chief, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], shall issue rules to implement the provisions of this section.

(Sept. 24, 1976, D.C. Law 1-85, title V, § 503, as added Mar. 31, 2009, D.C. Law 17-372, § 3(m), 56 DCR 1365; June 3, 2011, D.C. Law 18-377, § 2(f), 58 DCR 1174.)

Effect of amendments. — D.C. Law 18-377, in subsec. (f), substituted “January 1, 2013” for “January 1, 2011”.

Emergency legislation. — For temporary (90 day) addition, see § 3(m) of Firearms Registration Emergency Amendment Act of 2008 (D.C. Act 17-651, January 6, 2009, 56 DCR 911).

For temporary (90 day) amendment of section, see § 502(f) of Public Safety Legislation Sixty-Day Layover Emergency Amendment Act of 2010 (D.C. Act 18-693, January 18, 2011, 58 DCR 640).

For temporary (90 day) amendment of section, see § 502(f) of Public Safety Legislation Sixty-Day Layover Congressional Review

Emergency Amendment Act of 2011 (D.C. Act 19-45, April 20, 2011, 58 DCR 3701).

For temporary (90 day) amendment of section, see § 2(m) of Firearms Emergency Amendment Act of 2012 (D.C. Act 19-352, May 11, 2012, 59 DCR 5116).

For temporary (90 day) amendment of section, see § 2(m) of the Firearms Amendments Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-394, July 18, 2012, 59 DCR 8694).

Legislative history of Law 17-372. — For Law 17-372, see notes following § 7-2501.01.

Legislative history of Law 18-377. — For history of Law 18-377, see notes under § 7-2502.03.

§ 7-2505.04. Prohibition on sale, transfer, ownership, or possession of designated unsafe pistol.

(a) Except as provided in subsections (c), (d), or (e) of this section, beginning January 1, 2009, a pistol that is not on the California Roster of Handguns Certified for Sale, (also known as the California Roster of Handguns Determined Not to be Unsafe), pursuant to California Penal Code § 12131, as of January 1, 2009, may not be manufactured, sold, given, loaned, exposed for sale, transferred, or imported into the District of Columbia.

(b) Except as provided in subsection (e) of this section, beginning January 1, 2009, a pistol that is not on the California Roster of Handguns Certified for Sale as of January 1, 2009, may not be owned or possessed within the District of Columbia unless that pistol was lawfully owned and registered prior to January 1, 2009.

(c) Except as provided in subsection (e) of this section, a District of Columbia resident who is the owner of a pistol lawfully registered prior to January 1, 2009, that is not on the California Roster of Handguns Certified for Sale as of January 1, 2009, and who wishes to sell or transfer that pistol after January 1, 2009, may do so only by selling or transferring ownership of the handgun to a licensed firearm dealer.

(d) Except as provided in subsection (e) of this section, beginning January 1,

2009, a licensed firearm dealer who retains in the dealer's inventory, or who otherwise lawfully acquires, any pistol not on the California Roster of Handguns Certified for Sale as of January 1, 2009, may sell, loan, give, trade, or otherwise transfer the firearm only to another licensed firearm dealer.

(e) This section shall not apply to:

(1) Firearms defined as curios or relics, as defined in 27 C.F.R. § 478.11;

(2) The purchase of any firearm by any law enforcement officer or agent of the District or the United States;

(3) Pistols that are designed expressly for use in Olympic target shooting events, as defined by rule;

(4) Certain single-action revolvers, as defined by rule;

(5) The sale, loan, or transfer of any firearm that is to be used solely as a prop during the course of a motion picture, television, or video production by an authorized participant in the course of making that production or event or by an authorized employee or agent of the entity producing that production or event;

(6) The temporary transfer of a lawfully owned and registered firearm for the purposes of cleaning, repair, or servicing of the firearm by a licensed firearm dealer; or

(7) The possession of a firearm by a non-resident of the District of Columbia while temporarily traveling through the District; provided, that the firearm shall be transported in accordance with § 22-4504.02.

(f) The Chief shall review any additions or deletions to the California Roster of Handguns Certified for Sale at least annually. For purposes of District law, the Chief is authorized to revise, by rule, the roster of handguns determined not to be unsafe prescribed by subsection (a) of this section and to prescribe by rule the firearms permissible pursuant to subsection (e) of this section.

(g) The Chief shall provide to the licensed firearm dealers within the District information about how to obtain a copy of the California Roster of Handguns Certified for Sale and any revisions to it made the Chief.

(Sept. 24, 1976, D.C. Law 1-85, title II, § 504, as added Mar. 31, 2009, D.C. Law 17-372, § 3(m), 56 DCR 1365.)

Emergency legislation. — For temporary (90 day) addition, see § 3(m) of Firearms Registration Emergency Amendment Act of 2008 (D.C. Act 17-651, January 6, 2009, 56 DCR 911).

Legislative history of Law 17-372. — For Law 17-372, see notes following § 7-2501.01.

Subchapter VI. Possession of Ammunition.

§ 7-2506.01. Persons permitted to possess ammunition.

(a) No person shall possess ammunition in the District of Columbia unless:

(1) He is a licensed dealer pursuant to subchapter IV of this unit;

(2) He is an officer, agent, or employee of the District of Columbia or the United States of America, on duty and acting within the scope of his duties when possessing such ammunition;

(3) He is the holder of the valid registration certificate for a firearm of the same gauge or caliber as the ammunition he possesses; except, that no such person shall possess restricted pistol bullets; or

(4) He holds an ammunition collector's certificate on September 24, 1976;

(b) No person in the District shall possess, sell, or transfer any large capacity ammunition feeding device regardless of whether the device is attached to a firearm. For the purposes of this subsection, the term "large capacity ammunition feeding device" means a magazine, belt, drum, feed strip, or similar device that has a capacity of, or that can be readily restored or converted to accept, more than 10 rounds of ammunition. The term "large capacity ammunition feeding device" shall not include an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition.

(Sept. 24, 1976, D.C. Law 1-85, title VI, § 601, 23 DCR 2464; Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780; Aug. 2, 1983, D.C. Law 5-19, § 4, 30 DCR 3328; Mar. 31, 2009, D.C. Law 17-372, § 3(n), 56 DCR 1365.)

Prior Codifications. — 1981 Ed., § 6-2361. 1973 Ed., § 6-1861.

Effect of amendments. — D.C. Law 17-372 designated subsec. (a); and added subsec. (b).

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(d) of Second Firearms Control Emergency Amendment Act of 2008 (D.C. Act 17-502, September 16, 2008, 55 DCR 9904).

For temporary (90 day) amendment of section, see § 2(d) of Second Firearms Control Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-601, December 12, 2008, 56 DCR 9).

For temporary (90 day) amendment of section, see § 3(n) of Firearms Registration Emergency Amendment Act of 2008 (D.C. Act 17-651, January 6, 2009, 56 DCR 911).

For temporary (90 day) amendment of sec-

tion, see § 2(n) of Firearms Emergency Amendment Act of 2012 (D.C. Act 19-352, May 11, 2012, 59 DCR 5116).

For temporary (90 day) amendment of section, see § 2(n) of the Firearms Amendments Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-394, July 18, 2012, 59 DCR 8694).

Legislative history of Law 1-85. — For legislative history of D.C. Law 1-85, see Historical and Statutory Notes following § 7-2501.01.

Legislative history of Law 2-62. — For legislative history of D.C. Law 2-62, see Historical and Statutory Notes following § 7-2501.01.

Legislative history of Law 5-19. — For legislative history of D.C. Law 5-19, see Historical and Statutory Notes following § 7-2501.01.

Legislative history of Law 17-372. — For Law 17-372, see notes following § 7-2501.01.

CASE NOTES

ANALYSIS

Admissibility of evidence.

Aiders and abettors.

Constructive possession.

In general.

Instructions.

Procedure generally.

Review.

Validity.

Weight and sufficiency of evidence.

Admissibility of evidence.

Defense counsel was entitled, under rule of completeness, to question arresting officer regarding statements defendant made to officer at time of arrest, in order to refute other officer's testimony that defendant had not men-

tioned having a permit for gun, in prosecution for weapon and drug offenses; government's theory of case was that defendant had kept gun in car to protect marijuana in trunk, but defendant's innocent explanation for why gun was in car tended to undermine that theory and thus was highly relevant to the defense, not only for refuting intent element of gun and ammunition offenses, but also for rebutting defendant's alleged awareness of marijuana in the trunk. *Cox v. United States*, 898 A.2d 376, 2006 D.C. App. LEXIS 207 (2006).

Aiders and abettors.

Eighteen year-old defendant had standing to assert Second Amendment challenge to charges for unregistered firearm and unlawful possession of ammunition if he could show he met

statutory requirements for obtaining registration certificate and license to possess firearms by showing, at evidentiary hearing, that application was accompanied by notarized statement of his parent or guardian that he had permission to own and use firearm to be registered and that parent or guardian assumed civil liability for all damages resulting from actions of defendant in use of firearm to be registered. *Headspeth v. District of Columbia*, 2012 WL 2049175 (2012).

Instruction that stated that an aider and abettor is legally responsible for the acts of other persons that are the “natural and probable consequence” of the crime in which he intentionally participates was not plain error in armed robbery (AR) prosecution, even though “natural and probable consequence” language in the aiding and abetting instruction had been rejected since defendant’s trial, as defendant could not demonstrate that his substantial rights were affected, in light of overwhelming evidence that defendant was an active participant in the robbery. *Little v. United States*, 989 A.2d 1096, 2010 D.C. App. LEXIS 82 (2010).

Constructive possession.

Constructive possession of a weapon and ammunition may be sole or joint. *Carter v. United States*, 957 A.2d 9, 2008 D.C. App. LEXIS 397 (2008).

In general.

Defendant’s ownership of vehicle where pistol was found, his operation of that vehicle, and circumstances showing his knowledge that pistol was in the trunk of the vehicle are sufficient to sustain conviction under this section. *United States v. Duncan*, 115 WLR 2517 (Super. Ct. 1987).

Constructive possession of weapon requires proof that defendant knew of the weapon’s location, had ability to exercise dominion and control over it, and intended to exercise such dominion and control. D.C. Code 1981, §§ 6-2311(a), 6-2361, 22-3214(a). *In re M.I.W.*, 667 A.2d 573, 1995 D.C. App. LEXIS 225 (1995).

To support conviction based on firearm and ammunition offenses, government was required to prove defendant had actual or constructive possession of firearms, and where defendant was not found in actual possession of firearms, government had to prove that defendant had constructive possession of firearms. D.C. Code 1981, §§ 6-2311(a), 6-2361(3), 22-3204(a, b). *Taylor v. United States*, 662 A.2d 1368, 1995 D.C. App. LEXIS 151 (1995).

Carrying pistol without a license, possession of unregistered firearm, and possession of unregistered ammunition are general intent crimes, and no specific intent to use gun (or ammunition) need be proved in order to obtain conviction. D.C. Code 1981, §§ 6-2311, 6-2361,

22-3204. *Bsharah v. United States*, 646 A.2d 993, 1994 D.C. App. LEXIS 143 (1994).

Assault defendant who voluntarily turned over weapon to investigating officers was not immune from prosecution for possessing unregistered firearm and unregistered ammunition absent compliance with statutory requirement that weapon be unloaded and securely wrapped in package at time of surrender. D.C. Code 1981, §§ 6-2311(a), 6-2361(3). *Yoon v. United States*, 594 A.2d 1056, 1991 D.C. App. LEXIS 199 (1991), amended by 610 A.2d 1388, 1992 D.C. App. LEXIS 186 (D.C. 1992).

Convictions for offenses of possession of unregistered firearm and possession of unregistered ammunition did not merge with defendant’s conviction for carrying unlicensed pistol, since registration offenses concerned firearm in question while licensing offense related to personal qualifications of particular individual to carry pistol in district. D.C. Code 1981, §§ 6-2311(a), 6-2361(3), 22-3204. *Irby v. United States*, 585 A.2d 759, 1991 D.C. App. LEXIS 10 (1991).

In prosecution for unlawful possession of ammunition, fact that defendant is holder of valid registration certificate for firearm of same gauge or caliber as ammunition he possessed is an affirmative defense. D.C. Code 1981, § 6-2361(3). *Logan v. United States*, 489 A.2d 485, 1985 D.C. App. LEXIS 346 (1985).

In prosecution for unlawful possession of ammunition, Government is required to prove only that defendants possessed ammunition as defined by Code to establish essential element of offense. D.C. Code 1981, § 6-2361. *Logan v. United States*, 489 A.2d 485, 1985 D.C. App. LEXIS 346 (1985).

Constructive possession of an unregistered weapon or ammunition requires knowledge of the presence of the weapon or ammunition and the existence of dominion and control over them. D.C. Code 1981, §§ 6-2311, 6-2361, 11-707(a); §§ 22-2202, 22-2205 (repealed). *Easley v. United States*, 482 A.2d 779, 1984 D.C. App. LEXIS 497 (1984).

It is absolutely clear from this section and §§ 6-2311, 6-2313, 6-2323 and 6-2375 and the language and phrasing of other provisions of the Firearms Control Regulations Act of 1975 that the Act focuses equally, if not more, on the person than on the firearm. This dual emphasis fully comports with the purpose of the Act to freeze the handgun population within the District of Columbia by expanding and strengthening the then preexisting firearm registration standards and to prescribe criminal penalties for the violation of its provisions. *District of Columbia v. Rowan*, 116 WLR 2353 (Super. Ct. 1988).

Although neither a machine gun nor its ammunition is registerable, it is a violation of the registration statute to possess them. *United*

States v. Smith, 118 WLR 2277 (Super. Ct. 1990).

Instructions.

Instruction that stated that an aider and abettor is legally responsible for the acts of other persons that are the “natural and probable consequence” of the crime in which he intentionally participates was not plain error in prosecution for assault with a dangerous weapon (ADW), aggravated assault while armed (AAWA), possession of a firearm during a crime of violence (PFCV), carrying a pistol without a license (CPWL), possession of an unregistered firearm (UF), and unlawful possession of ammunition (UA), even though “natural and probable consequence” language in the aiding and abetting instruction had been rejected since defendant’s trial, as defendant could not demonstrate that his substantial rights were affected, in light of overwhelming evidence that defendant “knowingly and intelligently” participated in the commission of such offenses. *Little v. United States*, 989 A.2d 1096, 2010 D.C. App. LEXIS 82 (2010).

Procedure generally.

Because unauthorized possession of ammunition is offense in District of Columbia, and possession of rifle clip may be offense, testimony concerning drug defendant’s alleged possession of those items implicated rule dealing with evidence of other crimes. Fed.Rules Evid.Rule 404(b), 18 U.S.C.; D.C. Code 1981, §§ 6-2302(2, 9), 6-2311, 6-2361. *United States v. Ruffin*, 40 F.3d 1296, 1994 U.S. App. LEXIS 34342 (C.A.D.C. 1994), writ of certiorari denied by 514 U.S. 1074, 115 S. Ct. 1716, 131 L. Ed. 2d 575, 1995 U.S. LEXIS 2785, 63 U.S.L.W. 3754 (1995).

Defendant was entitled to have jury trial for charges of possession of unregistered firearm and unlawful possession of ammunition, where each charge carried a maximum authorized punishment of more than six months’ confinement. U.S.C. Const. Art. 3, § 2, cl. 3; Amend. 6; D.C. Code 1981, §§ 6-2311, 6-2361, 6-2376. *Henry v. United States*, 754 A.2d 926, 2000 D.C. App. LEXIS 135 (2000).

Exclusion of any reference to defendant’s rights, under federal Firearms Owners’ Protection Act (FOPA), to transport weapon between two states in which it was lawful to carry weapon so long as weapon was unloaded and inaccessible deprived defendant of instruction on significant part of his theory of case and created erroneous impression that defendant had been engaged in criminal conduct immediately prior to his handing pouch containing loaded pistol to police officer at entrance to Capitol Building, which misleading incriminatory impression about defendant’s earlier actions had no probative value whatsoever in

prosecution for carrying pistol without a license, possession of unregistered firearm and possession of ammunition for unregistered firearm. 18 U.S.C. § 921 et seq.; D.C. Code 1981, §§ 6-2311, 6-2361, 22-3204. *Bieder v. United States*, 662 A.2d 185, 1995 D.C. App. LEXIS 142 (1995).

Trial court did not abuse its discretion in curtailing scope of defendant’s cross-examination of arresting officer regarding personnel regulations and practices, in prosecution for carrying pistol without license, possession of unregistered firearm, unlawful possession of ammunition, possession of phencyclidine and possession of marijuana; defendant proffered no facts or follow-up questions which would have supported theory that officer’s own personnel record was such that he had any incentive to misrepresent circumstances justifying arrest. D.C. Code 1981, §§ 6-2311(a), 6-2361(3), 22-3204, 33-541(d). *Deneal v. United States*, 551 A.2d 1312, 1988 D.C. App. LEXIS 219 (1988).

In prosecution for unlawful possession of ammunition, jurors could infer that ammunition was live from fact that ammunition was recovered from pistol thrown out of defendants’ car. D.C. Code 1981, § 6-2361. *Logan v. United States*, 489 A.2d 485, 1985 D.C. App. LEXIS 346 (1985).

Review.

Because defendant did not raise his Second Amendment claims at trial, appellate court would review for plain error defendant’s claims that right of the people to keep and bear arms, recognized in the Second Amendment, encompassed the possession of handgun ammunition in the home and that the unlawful possession of ammunition (UA) statute unconstitutionally criminalized all such possession and that the UA statute was unconstitutional as applied to him. *Herrington v. United States*, 6 A.3d 1237, 2010 D.C. App. LEXIS 611 (2010).

Admission of Drug Enforcement Administration (DEA) report, indicating in part that plastic bag recovered contained 4.5 grams of 84 percent pure crack cocaine, in violation of the Confrontation Clause, did not render defendant’s three gun-related convictions unconstitutional; defendant indicated that weapon found was for personal use and identified the weapon as a rare type of handgun. *Smith v. United States*, 966 A.2d 367, 2009 D.C. App. LEXIS 35 (2009).

Entry of judgment on convictions for carrying a pistol without a license (CPWL), possession of an unregistered firearm (UF), and unlawful possession of ammunition (UA) was not plain error, even though defendant argued that the convictions were obtained in violation of the Second Amendment as construed by the United States Supreme Court in District of Columbia v.

Heller, in which the Supreme Court held that the Second Amendment forbade any absolute prohibition of handguns held and used for self defense in the home; the jury found that defendant used the gun in question to assault another, and no evidence was presented that defendant possessed the gun for purposes of self defense. *Howerton v. United States*, 964 A.2d 1282, 2009 D.C. App. LEXIS 32 (2009).

Defendant's claim on appeal, alleging that gun control statutes denied him rights protected by the Second Amendment, was foreclosed by prior binding precedents of Court of Appeals, which rejected claim. *Andrews v. United States*, 922 A.2d 449, 2007 D.C. App. LEXIS 232 (2007).

Trial judge's failure to take any action on his own initiative when prosecutor alluded to defendant's parole status at trial for unlawful possession of unregistered ammunition was not plain error, since fact that defendant was on parole had been brought out by defense counsel and it was arguably relevant to defendant's claim that he had forgotten about ammunition kept in his desk drawer. D.C. Code 1981, § 6-2361. *Ko v. United States*, 722 A.2d 830, 1998 D.C. App. LEXIS 246 (1998), writ of certiorari denied by 526 U.S. 1094, 119 S. Ct. 1512, 143 L. Ed. 2d 664, 1999 U.S. LEXIS 2971, 67 U.S.L.W. 3653 (1999).

Validity.

The unlawful possession of ammunition (UA) statute was unconstitutional as applied to defendant; defendant's UA conviction was based solely on proof that the defendant possessed handgun ammunition in his home, solely, that is, on proof of conduct protected by the Second Amendment, and nothing more was proved at trial to show that the defendant was disqualified from exercising his Second Amendment rights, in that there was no evidence that he possessed ammunition for an illegal purpose or that he failed to comply with applicable registration requirements for a firearm corresponding to the ammunition. *Herrington v. United States*, 6 A.3d 1237, 2010 D.C. App. LEXIS 611 (2010).

While proper registration is an affirmative defense to unlawful possession of ammunition (UA), the prosecution may assume the burden of charging and proving beyond a reasonable doubt that the defendant lacked the necessary registration in order to satisfy the Second Amendment, and by doing so, the prosecution would establish that the defendant indeed was disqualified from exercising his Second Amendment right to possess handgun ammunition in the home, application of the UA statute to the defendant in such a case would not be unconstitutional. *Herrington v. United States*, 6 A.3d 1237, 2010 D.C. App. LEXIS 611 (2010).

Convictions for carrying a pistol without a license (CPWL), possession of an unregistered firearm (UF), and unlawful possession of ammunition (UA) did not constitute plain error, despite argument that the convictions were in violation of the Second Amendment as construed by the United States Supreme Court in *District of Columbia v. Heller*, in which the Supreme Court held that the Second Amendment forbade an absolute prohibition on handgun possession in the home; statutes were not facially invalid under *Heller*, and defendant was not in his own home at the time of offenses. *Little v. United States*, 989 A.2d 1096, 2010 D.C. App. LEXIS 82 (2010).

Finding that prosecution of defendant for carrying a pistol without a license (CPWL), possession of an unregistered firearm (UF), and unlawful possession of ammunition (UA) did not violate his Second Amendment rights under *Heller*, which invalidated statutes banning handgun possession in the home, was not plain error; there was no evidence that when the police saw defendant toss pistol to the ground he was even within boundary lines or curtilage of his home, much less inside home itself, and no evidence linked defendant's possession of gun to any arguable motive of self-defense that had impelled him to remove gun from his home. *Sims v. United States*, 963 A.2d 147, 2008 D.C. App. LEXIS 493 (2008).

Defendant's claims that Second Amendment barred his prosecution for carrying a pistol without a license (CPWL), possession of an unregistered firearm (UF), and unlawful possession of ammunition (UA) and that these statutes were constitutionally invalid on their face in light of *Heller*, which held that the Second Amendment conferred an individual right to keep and bear arms, were not preserved for appeal since the record revealed no indication that defendant raised these claims in the trial court. *Sims v. United States*, 963 A.2d 147, 2008 D.C. App. LEXIS 493 (2008).

District of Columbia firearms statutes did not violate constitutional right to keep and bear arms of defendant convicted of carrying pistol without license, possession of unregistered firearm, and unlawful possession of ammunition under those statutes. D.C. Code 1981, §§ 6-2311, 6-2361, 22-3204; U.S.C. Const. Amend. 2. *Sandridge v. United States*, 520 A.2d 1057, 1987 D.C. App. LEXIS 286 (1987), writ of certiorari denied by 484 U.S. 868, 108 S. Ct. 193, 98 L. Ed. 2d 145, 1987 U.S. LEXIS 3348, 56 U.S.L.W. 3247 (1987).

A statute criminalizing the possession of ammunition in all but four narrowly defined circumstances was constitutional under the Second Amendment as applied to defendant, even though defendant pointed to the United State Supreme Court's decision in *District of Columbia v. Heller* that the Second Amendment was

violated by the District's ban on handgun possession in the home and its prohibition against rendering any lawful firearm in the home operable for the purpose of immediate self-defense; defendant was a convicted felon, and the Supreme Court made clear in *Heller* that the Second Amendment provided no constitutional protection to convicted felons. *D.C. v. Lewis*, 136 WLR 2609 (Super. Ct. 2008).

Weight and sufficiency of evidence.

There was no manifest miscarriage of justice in defendant's convictions under District of Columbia law based on proof that defendant was not licensed to carry arms and that two pistols recovered in his estranged wife's apartment were not registered in his name, even though defendant alleged evidence was insufficient in that record search was fatally flawed because he did not reside at his estranged wife's address and that record search had been limited to registrations and licenses in defendant's name at that address, where there was no claim that search using defendant's correct address would have uncovered any exculpatory license or registration record and where defendant's prior convictions would have made it unlawful for him to own, possess, or register pistol. *D.C. Code 1981, §§ 6-2311(a), 6-2312(a)(2), 6-2361, 22-3202, 22-3204. United States v. Jackson*, 824 F.2d 21, 1987 U.S. App. LEXIS 9570 (C.A.D.C. 1987), writ of certiorari denied by 484 U.S. 1013, 108 S. Ct. 715, 98 L. Ed. 2d 665, 1988 U.S. LEXIS 12, 56 U.S.L.W. 3460 (1988).

Evidence was insufficient to support two defendants' convictions for carrying a pistol without a license (CPWL), possession of an unregistered firearm (UF), and possession of unregistered ammunition (UA), even though the government presented proof that neither defendant had a license or registration for a pistol; the government's theory was that defendants aided and abetted a conspirator in his possession and carrying of a pistol, and the government did not present evidence that the coconspirator lacked a license and firearm registration on the day in question. *Walker v. United States*, 982 A.2d 723, 2009 D.C. App. LEXIS 541 (2009).

Evidence was sufficient to show that defendant had constructive possession of gun and ammunition found in vehicle that he had been driving, so as to support convictions for possession of an unregistered firearm (UF), unlawful possession of ammunition (UA), and carrying a pistol without a license (CPWL); gun was located next to where defendant had been sitting and was immediately visible to law enforcement officer when he walked toward driver's side of vehicle. *Carter v. United States*, 957 A.2d 9, 2008 D.C. App. LEXIS 397 (2008).

Evidence was sufficient to find that defendant was in at least constructive possession of gun found in his station wagon, and thus, was sufficient to support convictions for possessory weapons offenses; government's evidence established that defendant owned the station wagon and that he was its driver on the night he was arrested, and police officers testified that the loaded revolver was on the car's floor at defendant's right thigh. *White v. United States*, 763 A.2d 715, 2000 D.C. App. LEXIS 278 (2000).

Conviction of unlawful possession of unregistered ammunition was supported by evidence that defendant, who had purchased restaurant, found ammunition owned by seller in office, put that ammunition in his desk drawer, and made no attempt for several months to return ammunition to seller. *D.C. Code 1981, § 6-2361. Ko v. United States*, 722 A.2d 830, 1998 D.C. App. LEXIS 246 (1998), writ of certiorari denied by 526 U.S. 1094, 119 S. Ct. 1512, 143 L. Ed. 2d 664, 1999 U.S. LEXIS 2971, 67 U.S.L.W. 3653 (1999).

There was sufficient evidence that defendant constructively possessed live round of ammunition found on bookshelf in his sleeping quarters to support conviction for ammunition possession; cooccupant of apartment testified that ammunition was not his and that no one else brought guns or ammunition into apartment. *D.C. Code 1981, § 6-2361(3). Bright v. United States*, 698 A.2d 450, 1997 D.C. App. LEXIS 174 (1997).

In prosecution for carrying pistol without license, possession of unregistered firearm, and unlawful possession of ammunition, there was sufficient proof of operability of defendant's pistol; eyewitness testimony, as well as testimony of police officers that gun was fully loaded with live ammunition when recovered, established operability. *D.C. Code 1981, §§ 6-2311(a), 6-2361(3), 22-3204(a). Key v. United States*, 587 A.2d 1072, 1991 D.C. App. LEXIS 48 (1991).

Evidence, which established that end of machine gun protruding from under driver's seat of automobile was unconcealed at juvenile's feet and so close that he would have virtually kicked it during the 15 to 20 minutes that he was alone in backseat of automobile, was sufficient to support finding of constructive possession and therefore evidence supported adjudication of delinquency based upon unlawful possession of a machine gun and ammunition. *D.C. Code 1981, §§ 6-2361, 22-3214(a). In re F.T.J.*, 578 A.2d 1161, 1990 D.C. App. LEXIS 198 (1990).

Juveniles' proximity to a pistol and ammunition in plain view in crack house was not sufficient to support adjudications of delinquency for possession of unregistered firearm and unlawful possession of ammunition where there was no evidence that juveniles, who were

two of six persons roughly equidistant from the contraband, harbored the intent to guide the destiny of the weapon or the live rounds and where juveniles were found not guilty of any connection with the drugs. D.C. Code 1981, §§ 6-2311, 6-2361. In re T.M., 577 A.2d 1149, 1990 D.C. App. LEXIS 165 (1990).

Evidence that defendants possessed ammunition was sufficient for conviction of unlawful possession of ammunition, where defendants failed to produce registration certificate for pistol of same caliber. D.C. Code 1981, § 6-2361. Logan v. United States, 489 A.2d 485, 1985 D.C. App. LEXIS 346 (1985).

Although the police officer who found the gun and five rounds of ammunition testified that two inches of the gun's handle were visible, where the officer was looking through the front windshield, and was using a flashlight, defendants were sitting in the backseat in the dark, and front seat was a bench seat, rather than

two bucket seats, thus diminishing likelihood that defendants saw gun, there was insufficient evidence from which to reasonably conclude that defendants knew gun was in car and, thus, insufficient evidence from which to sustain defendants' convictions of possession of an unregistered weapon and ammunition therefor. D.C. Code 1981, §§ 6-2311, 6-2361, 11-707(a); §§ 22-2202, 22-2205 (repealed). Easley v. United States, 482 A.2d 779, 1984 D.C. App. LEXIS 497 (1984).

Defendants' knowledge and their ability to control gun and ammunition therefor could not be inferred from evidence that they and their codefendants had just committed a crime together where there was no evidence that defendants or their codefendants used gun during crime. D.C. Code 1981, §§ 6-2311, 6-2361, 11-707(a); §§ 22-2202, 22-2205 (repealed). Easley v. United States, 482 A.2d 779, 1984 D.C. App. LEXIS 497 (1984).

Subchapter VII. Miscellaneous Provisions.

§ 7-2507.01. Security mortgages, deposits, or pawns with firearms, destructive devices, or ammunition prohibited; loan or rental of firearms, destructive devices, or ammunition prohibited.

(a) No firearm, destructive device, or ammunition shall be security for, or be taken or received by way of any mortgage, deposit, pledge, or pawn.

(b) No person may loan, borrow, give, or rent to or from another person, any firearm, destructive device, or ammunition.

(Sept. 24, 1976, D.C. Law 1-85, title VII, § 701, 23 DCR 2464.)

Prior Codifications. — 1981 Ed., § 6-2371. 1973 Ed., § 6-1871.

Legislative history of Law 1-85. — For

legislative history of D.C. Law 1-85, see Historical and Statutory Notes following § 7-2501.01.

CASE NOTES

Construction and application.

The provisions of subsection (b) prohibiting any person from lending, giving or renting a firearm to another person, even where that person lending, giving or renting the firearm is a valid holder of a registration certificate for the firearm would apply whether the recipient is a relative or a friend. Further, it would

appear that even the wife or grown child of a holder of a valid registration certificate would not be protected from prosecution if she or he were to exercise control over the firearm or take possession of it, except to voluntarily surrender it to the Chief of Police or his designated agent pursuant to Section 6-2375. District of Columbia v. Rowan, 116 WLR 2353 (Super. Ct. 1988).

§ 7-2507.02. Responsibilities regarding storage of firearms.

(a) It shall be the policy of the District of Columbia that each registrant should keep any firearm in his or her possession unloaded and either

disassembled or secured by a trigger lock, gun safe, locked box, or other secure device.

(b) No person shall store or keep any firearm on any premises under his control if he knows or reasonably should know that a minor is likely to gain access to the firearm without the permission of the parent or guardian of the minor unless such person:

(1) Keeps the firearm in a securely locked box, secured container, or in a location which a reasonable person would believe to be secure; or

(2) Carries the firearm on his person or within such close proximity that he can readily retrieve and use it as if he carried it on his person.

(c)(1) A person who violates subsection (b) of this section is guilty of criminally negligent storage of a firearm and, except as provided in paragraph (2) of this subsection, shall be fined not more than \$1,000, imprisoned not more than 180 days, or both.

(2) A person who violates subsection (b) of this section and the minor causes injury or death to himself or another shall be fined not more than \$5,000, imprisoned not more than 5 years, or both.

(3) The provisions of paragraphs (1) and (2) of this subsection shall not apply if the minor obtains the firearm as a result of an unlawful entry or burglary to any premises by any person.

(d) For the purposes of this section, the term “minor” shall mean a person under the age of 18 years.

(Sept. 24, 1976, D.C. Law 1-85, title VII, § 702, 23 DCR 2464; Mar. 31, 2009, D.C. Law 17-372, § 3(o), 56 DCR 1365.)

Prior Codifications. — 1981 Ed., § 6-2372. 1973 Ed., § 6-1872.

Effect of amendments. — D.C. Law 17-372 rewrote the section, which had read as follows: “Except for law enforcement personnel described in § 7-2502.01(b)(1), each registrant shall keep any firearm in his possession unloaded and disassembled or bound by a trigger lock or similar device unless such firearm is kept at his place of business, or while being used for lawful recreational purposes within the District of Columbia.”

Emergency legislation. — For temporary (90 day) amendment, see § 2(c) of Firearms Control Emergency Amendment Act of 2008 (D.C. Act 17-422, July 16, 2008, 55 DCR 8237).

For temporary (90 day) amendment of section, see § 2(e) of Second Firearms Control Emergency Amendment Act of 2008 (D.C. Act 17-502, September 16, 2008, 55 DCR 9904).

For temporary (90 day) repeal of D.C. Act 17-422, see § 5 of Second Firearms Control Emergency Amendment Act of 2008 (D.C. Act 17-502, September 16, 2008, 55 DCR 9904).

For temporary (90 day) amendment of section, see §§ 2(e) and 4 of Second Firearms Control Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-601, December 12, 2008, 56 DCR 9).

For temporary (90 day) amendment of section, see § 3(o) of Firearms Registration Emergency Amendment Act of 2008 (D.C. Act 17-651, January 6, 2009, 56 DCR 911).

For temporary (90 day) amendment of section, see § 2(o) of Firearms Emergency Amendment Act of 2012 (D.C. Act 19-352, May 11, 2012, 59 DCR 5116).

For temporary (90 day) amendment of section, see § 2(o) of the Firearms Amendments Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-394, July 18, 2012, 59 DCR 8694).

Legislative history of Law 1-85. — For legislative history of D.C. Law 1-85, see Historical and Statutory Notes following § 7-2501.01.

Legislative history of Law 17-372. — For Law 17-372, see notes following § 7-2501.01.

CASE NOTES

ANALYSIS

Business establishment.
Pleadings.
Standing.
Validity.

Business establishment.

A personal residence used for conducting business such as writing books and articles for publication was not the type of business establishment contemplated by the Council of the District of Columbia in enacting this section. *District of Columbia v. Rowan*, 116 WLR 2353 (Super. Ct. 1988).

Pleadings.

Complaint alleging that District of Columbia statute regulating manner in which firearms were stored violated D.C. statute prohibiting police regulation that was not usual and reasonable, failed to state a claim upon which relief could be granted. *Seegars v. Ashcroft*, 297 F.Supp.2d 201, 2004 U.S. Dist. LEXIS 406 (2004), affirmed in part and reversed in part by 396 F.3d 1248, 364 U.S. App. D.C. 512, 2005 U.S. App. LEXIS 1965 (2005).

Standing.

Plaintiff who was unable to assert a challenge, under Second Amendment, to District of Columbia statute regulating manner in which firearms were stored, lacked standing to challenge the statute. *Seegars v. Ashcroft*, 297 F.Supp.2d 201, 2004 U.S. Dist. LEXIS 406 (2004), affirmed in part and reversed in part by 396 F.3d 1248, 364 U.S. App. D.C. 512, 2005 U.S. App. LEXIS 1965 (2005).

District of Columbia residents who did not possess any firearms within the District failed to allege any harm resulting from enforcement of statute regulating manner in which firearms must be maintained, and therefore lacked standing to challenge such statute. *Seegars v. Ashcroft*, 297 F.Supp.2d 201, 2004 U.S. Dist. LEXIS 406 (2004), affirmed in part and reversed in part by 396 F.3d 1248, 364 U.S. App. D.C. 512, 2005 U.S. App. LEXIS 1965 (2005).

Validity.

District of Columbia statute containing prohibition against rendering any lawful firearm in the home operable for purpose of immediate self-defense violated Second Amendment. *District of Columbia v. Heller*, 128 S.Ct. 2783, 2008 U.S. LEXIS 5268 (2008).

District of Columbia's statutory requirement that a registered firearm be kept unloaded and disassembled or bound by trigger lock or similar device, unless such firearm is kept at a place of business, or while being used for lawful recreational purposes within the District of

Columbia, was unconstitutional under the Second Amendment. *Parker v. District of Columbia*, 478 F.3d 370, 2007 U.S. App. LEXIS 5519 (C.A.D.C. 2007), affirmed by 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637, 2008 U.S. LEXIS 5268, 76 U.S.L.W. 4631, 21 Fla. L. Weekly Fed. S 497 (2008), writ of certiorari denied by 554 U.S. 932, 128 S. Ct. 2994, 171 L. Ed. 2d 910, 2008 U.S. LEXIS 5279, 76 U.S.L.W. 3683 (2008).

District of Columbia special police officer permitted to carry a handgun on duty as a guard at the Federal Judicial Center, who wished to possess one at his home and who applied for and was denied a registration certificate to own a handgun, had standing to raise §§ 1983 challenge to provisions of the District of Columbia's gun control laws; officer had invoked his rights under the Second Amendment to challenge the statutory classifications used to bar his ownership of a handgun under District of Columbia law, and the formal process of application and denial, however routine, made the injury to officer's alleged constitutional interest concrete and particular. *Parker v. District of Columbia*, 478 F.3d 370, 2007 U.S. App. LEXIS 5519 (C.A.D.C. 2007), affirmed by 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637, 2008 U.S. LEXIS 5268, 76 U.S.L.W. 4631, 21 Fla. L. Weekly Fed. S 497 (2008), writ of certiorari denied by 554 U.S. 932, 128 S. Ct. 2994, 171 L. Ed. 2d 910, 2008 U.S. LEXIS 5279, 76 U.S.L.W. 3683 (2008).

District of Columbia's general threat to prosecute violations of its gun control laws did not constitute an Article III injury sufficient to confer standing on citizens to bring an action challenging the gun control laws on Second Amendment grounds, given that the citizens only expressed an intention to violate the District of Columbia's gun control laws but had suffered no injury in fact. *Parker v. District of Columbia*, 478 F.3d 370, 2007 U.S. App. LEXIS 5519 (C.A.D.C. 2007), affirmed by 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637, 2008 U.S. LEXIS 5268, 76 U.S.L.W. 4631, 21 Fla. L. Weekly Fed. S 497 (2008), writ of certiorari denied by 554 U.S. 932, 128 S. Ct. 2994, 171 L. Ed. 2d 910, 2008 U.S. LEXIS 5279, 76 U.S.L.W. 3683 (2008).

District of Columbia statute regulating manner in which firearms were stored did not violate Second Amendment rights of resident who owned shotgun; resident was not a part of the District's militia. *Seegars v. Ashcroft*, 297 F.Supp.2d 201, 2004 U.S. Dist. LEXIS 406 (2004), affirmed in part and reversed in part by 396 F.3d 1248, 364 U.S. App. D.C. 512, 2005 U.S. App. LEXIS 1965 (2005).

Statutes establishing qualifications for firearms registration, that were severable from the

flat ban on registering handguns that was ruled unconstitutional in the United States Supreme Court's decision in *Heller*, were compatible with the core interest protected by the Second Amendment, and were not unconstitutional. *Lowery v. United States*, 3 A.3d 1169, 2010 D.C. App. LEXIS 511 (2010), writ of certiorari denied by 132 S. Ct. 1090, 181 L. Ed. 2d 982, 2012 U.S. LEXIS 708, 80 U.S.L.W. 3425 (U.S. 2012).

Firearms Control Regulations Act of 1975 is

not unconstitutionally vague. *McIntosh v. Washington*, 395 A.2d 744, 1978 D.C. App. LEXIS 365 (1978).

Statutory classification, under which individuals are allowed to maintain and assemble firearms at their places of business but not at home, does not deny equal protection. D.C. Code § 6-1872; U.S. Const. Amend. 14. *McIntosh v. Washington*, 395 A.2d 744, 1978 D.C. App. LEXIS 365 (1978).

§ 7-2507.03. Firing ranges.

Any person operating a firing range in the District, shall in addition to any other requirement imposed by law, register with the Chief, on a form prescribed by him, which shall include the business name of the range, the location, the names and home addresses of the owners and principal officers, the types of weapons fired there, the number and types of weapons normally stored there, the days and hours of operation, and such other information as the Chief shall require.

(Sept. 24, 1976, D.C. Law 1-85, title VII, § 703, 23 DCR 2464.)

Prior Codifications. — 1981 Ed., § 6-2373. 1973 Ed., § 6-1873.

Legislative history of Law 1-85. — For

legislative history of D.C. Law 1-85, see Historical and Statutory Notes following § 7-2501.01.

§ 7-2507.04. False information; forgery or alteration.

(a) It shall be unlawful for any person purchasing any firearm or ammunition, or applying for any registration certificate or dealer's license under this unit, or in giving any information pursuant to the requirements of this unit, to knowingly give false information or offer false evidence of identity.

(b) It shall be unlawful for anyone to forge or alter any application, registration certificate, or dealer's license submitted, retained or issued under this unit.

(Sept. 24, 1976, D.C. Law 1-85, title VII, § 704, 23 DCR 2464.)

Section references. — This section is referred to in §§ 7-2502.11 and 7-2504.09.

Prior Codifications. — 1981 Ed., § 6-2374. 1973 Ed., § 6-1874.

Legislative history of Law 1-85. — For legislative history of D.C. Law 1-85, see Historical and Statutory Notes following § 7-2501.01.

§ 7-2507.05. Voluntary surrender of firearms, destructive devices, or ammunition; immunity from prosecution; determination of evidentiary value of firearm.

(a) If a person or organization within the District voluntarily and peaceably delivers and abandons to the Chief any firearm, destructive device or ammunition at any time, such delivery shall preclude the arrest and prosecution of such person on a charge of violating any provision of this unit with respect to

the firearm, destructive device, or ammunition voluntarily delivered. Delivery under this section may be made at any police district, station, or central headquarters, or by summoning a police officer to the person's residence or place of business. Every firearm and destructive device to be delivered and abandoned to the Chief under this section shall be transported in accordance with § 22-4504.02 and, in the case of delivery to a police facility, the package shall be carried in open view. No person who delivers and abandons a firearm, destructive device, or ammunition under this section, shall be required to furnish identification, photographs, or fingerprints. No amount of money shall be paid for any firearm, destructive device, or ammunition delivered and abandoned under this section.

(b) Whenever any firearm, destructive device, or any ammunition is surrendered under this section or pursuant to § 7-2502.10(c)(1), the Chief shall inquire of the United States Attorney and the Corporation Counsel for the District whether such firearm is needed as evidence; provided, that if the same is not needed as evidence, it shall be destroyed.

(Sept. 24, 1976, D.C. Law 1-85, title VII, § 705, 23 DCR 2464; Mar. 31, 2009, D.C. Law 17-372, § 3(p), 56 DCR 1365.)

Cross references. — Ammunition feeding devices transfers, prohibition, see § 5-133.16.

Section references. — This section is referred to in §§ 7-2502.10, 7-2504.06, and 7-2505.01.

Prior Codifications. — 1981 Ed., § 6-2375. 1973 Ed., § 6-1875.

Effect of amendments. — D.C. Law 17-372, in subsec. (a), substituted "shall be transported in accordance with § 4504.02," for "shall be unloaded and securely wrapped in a package".

Temporary Amendment of Section. — For temporary (225 day) provisions prohibiting the transfer by the Metropolitan Police Department of ammunition feeding devices, see § 2 of Prohibition on the Transfer of Firearms Temporary Act of 1995 (D.C. Law 11-35, September 8, 1995, law notification 42 DCR 5304).

Emergency legislation. — For temporary prohibition on the transfer by the Metropolitan Police Department of any ammunition feeding device, see § 2 of the Prohibition on the Transfer of Firearms Emergency Act of 1995 (D.C. Act 11-58, May 18, 1995, 42 DCR 2574).

For temporary (90 day) amendment of section, see § 3(p) of Firearms Registration Emergency Amendment Act of 2008 (D.C. Act 17-651, January 6, 2009, 56 DCR 911).

Legislative history of Law 1-85. — For legislative history of D.C. Law 1-85, see Historical and Statutory Notes following § 7-2501.01.

Legislative history of Law 17-372. — For Law 17-372, see notes following § 7-2501.01.

Editor's notes. — Prohibition on transfer of ammunition feeding devices: For provisions prohibiting the transfer by the Metropolitan Police Department of ammunition feeding devices, see § 4-191.

CASE NOTES

ANALYSIS

Evidence.
In general.
Review.

Evidence.

Evidence of defendant's purported intent to surrender weapons and ammunition to police was not clear and unequivocal, and did not entitle defendant to immunity from prosecution on weapons charges based upon his voluntary and peaceable delivery of weapons to law enforcement, especially where one of three weapons recovered by police in search of defendant's

residence was loaded, contrary to immunity statute; defendant's testimony that he had told officers of his intent to surrender weapons in his residence to police was contradicted by testimony of one arresting officer, and his claim of such intent was contradicted by nature of his actions upon encountering police. *Lewis v. United States*, 871 A.2d 470, 2005 D.C. App. LEXIS 145 (2005).

In general.

Cohabitant of individual charged with weapons offenses was not entitled to statutory immunity from prosecution for such offenses

based upon voluntary surrender of weapons and ammunition to police, absent any evidence that cohabitant clearly and unequivocally intended to deliver and abandon to police weapons and ammunition that were seized from residence, or that she took any step to comply with statutory requirements for voluntary surrender of weapons and ammunition, where cohabitant, aware that police officers were looking for weapons and ammunition at another address, did not advise officers that such items could be found at her residence or that she wished to surrender them to police. *Lewis v. United States*, 871 A.2d 470, 2005 D.C. App. LEXIS 145 (2005).

By surrendering firearms to capitol police, defendant did not comply with statutory requirement that firearm be delivered "to the Chief" and was not immune from weapons prosecution under statute immunizing one whose possession of weapon was solely in order to surrender it to police custody; capitol police were not designated agents of chief of the metropolitan police for purpose of receiving surrendered firearms. D.C. Code 1981, §§ 6-2302(4), 6-2375(a). *Stein v. United States*, 532 A.2d 641, 1987 D.C. App. LEXIS 468 (1987), writ of certiorari denied by 485 U.S. 1010, 108 S. Ct. 1477, 99 L. Ed. 2d 705, 1988 U.S. LEXIS 1712, 56 U.S.L.W. 3718 (1988).

By delivering firearms and ammunition to capitol police officer at guard desk, defendant did not comply with statutory requirement to "abandon" firearms and was not immune from weapons prosecution under statute immunizing one whose possession of weapon was solely to deliver and abandon it to police; defendant, who had been employed as bodyguard for United States senator, indicated that he fully intended to retrieve guns and ammunition from capitol police when he left building so that he could take them with him on trip to South America. D.C. Code 1981, § 6-2375(a). *Stein v. United States*, 532 A.2d 641, 1987 D.C. App. LEXIS 468 (1987), writ of certiorari denied by 485 U.S. 1010, 108 S. Ct. 1477, 99 L. Ed. 2d 705, 1988 U.S. LEXIS 1712, 56 U.S.L.W. 3718 (1988).

Statute providing immunity from weapons prosecution for one whose possession of weapon was solely in order to surrender it to police custody is restricted to violations of Firearms Control Regulations Act of 1975, and does not grant immunity from prosecution for any other

firearm offenses. D.C. Code 1981, § 6-2375(a). *Stein v. United States*, 532 A.2d 641, 1987 D.C. App. LEXIS 468 (1987), writ of certiorari denied by 485 U.S. 1010, 108 S. Ct. 1477, 99 L. Ed. 2d 705, 1988 U.S. LEXIS 1712, 56 U.S.L.W. 3718 (1988).

Court of Appeals had jurisdiction under collateral order doctrine over defendant's interlocutory appeal from trial court's ruling, on motion to dismiss, that defendant, charged with weapons offense, was not immune under statute immunizing against conviction one whose possession of weapon was solely in order to surrender it to police custody. D.C. Code 1981, § 6-2375(a). *Stein v. United States*, 532 A.2d 641, 1987 D.C. App. LEXIS 468 (1987), writ of certiorari denied by 485 U.S. 1010, 108 S. Ct. 1477, 99 L. Ed. 2d 705, 1988 U.S. LEXIS 1712, 56 U.S.L.W. 3718 (1988).

It is absolutely clear from the provisions of this section and §§ 6-2311, 6-2313, 6-2323 and 6-2361 and the language and phrasing of other provisions of the Firearms Control Regulation Act of 1975 that the Act focuses equally, if not more, on the person than on the firearm. This dual emphasis fully comports with the purpose of the Act to freeze the handgun population within the District of Columbia by expanding and strengthening the then preexisting firearm registration standards and to prescribe criminal penalties for the violation of its provisions. *District of Columbia v. Rowan*, 116 WLR 2353 (Super. Ct. 1988).

Prosecution under this section is not barred where the gun was surrendered following the shooting incident at the defendant's home after the officer asked him for the firearm, and there was no testimony that the defendant affirmatively took steps to obtain the firearm and of his own initiative to deliver and abandon it for all times. *District of Columbia v. Rowan*, 116 WLR 2353 (Super. Ct. 1988).

Review.

Trial court's decision to grant or deny immunity from prosecution for weapons offenses based upon an individual's voluntary surrender of weapons at issue to law enforcement is a question of law, subject to de novo review by the Court of Appeals, although that court grants deference to the trial court's factual determinations inherent in resolving the question. *Lewis v. United States*, 871 A.2d 470, 2005 D.C. App. LEXIS 145 (2005).

§ 7-2507.06. Penalties.

Any person convicted of a violation of any provision of this unit shall be fined not more than \$1,000 or imprisoned for not more than 1 year, or both; except that:

- (1) A person who knowingly or intentionally sells, transfers, or distributes

a firearm, destructive device, or ammunition to a person under 18 years of age shall be fined not more than \$10,000 or imprisoned for not more than 10 years, or both.

(2)(A) Except as provided in subparagraph (B) of this paragraph, any person who is convicted a second time for possessing an unregistered firearm shall be fined not more than \$5,000 or imprisoned not more than 5 years, or both.

(B) A person who in the person's dwelling place, place of business, or on other land possessed by the person, possesses a pistol, or firearm that could otherwise be registered, shall be fined not more than \$1,000 or imprisoned not more than 1 year, or both.

(3) A person convicted of knowingly possessing restricted pistol bullets in violation of § 7-2506.01(3) may be sentenced to imprisonment for a term not to exceed 10 years and shall be sentenced to imprisonment for a mandatory-minimum term of not less than 1 year and shall not be released from prison or granted probation or suspension of sentence prior to serving the mandatory-minimum sentence, and, in addition, may be fined an amount not to exceed \$10,000.

(Sept. 24, 1976, D.C. Law 1-85, title VII, § 706, 23 DCR 2464; Mar. 5, 1981, D.C. Law 3-147, § 2, 27 DCR 4882; Aug. 20, 1994, D.C. Law 10-151, § 301, 41 DCR 2608; Apr. 24, 2007, D.C. Law 16-306, § 205, 53 DCR 8610.)

Section references. — This section is referred to in §§ 7-2503.01 and 7-2207.08.

Prior Codifications. — 1981 Ed., § 6-2376. 1973 Ed., § 6-1876.

Effect of amendments. — D.C. Law 16-306 added par. (3).

Emergency legislation. — For temporary amendment of section, see § 301 of the Omnibus Criminal Justice Reform Emergency Amendment Act of 1994 (D.C. Act 10-255, June 22, 1994, 41 DCR 4286).

For temporary (90 day) amendment of section, see § 205 of Omnibus Public Safety Emergency Amendment Act of 2006 (D.C. Act 16-445, July 19, 2006, 53 DCR 6443).

For temporary (90 day) amendment of section, see § 205 of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-490, October 18, 2006, 53 DCR 8686).

For temporary (90 day) amendment of section, see § 205 of Omnibus Public Safety Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-10, January 16, 2007, 54 DCR 1479).

For temporary (90 day) amendment of section, see § 205 of Omnibus Public Safety Second Congressional Review Emergency Amendment Act of 2007 (D.C. Act 17-25, April 19, 2007, 54 DCR 4036).

For temporary (90 day) amendment of section, see § 2(p) of Firearms Emergency Amendment Act of 2012 (D.C. Act 19-352, May 11, 2012, 59 DCR 5116).

For temporary (90 day) amendment of section, see § 2(o) of the Firearms Amendments Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-394, July 18, 2012, 59 DCR 8694).

Legislative history of Law 1-85. — For legislative history of D.C. Law 1-85, see Historical and Statutory Notes following § 7-2501.01.

Legislative history of Law 3-147. — Law 3-147, the "Firearms Penalty Act of 1980," was introduced in Council and assigned Bill No. 3-325, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on September 30, 1980 and October 14, 1980, respectively. Signed by the Mayor on October 29, 1980, it was assigned Act No. 3-272 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-151. — Law 10-151, the "Omnibus Criminal Justice Reform Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-98, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on March 29, 1994, and April 12, 1994, respectively. Signed by the Mayor on May 4, 1994, it was assigned Act No. 10-238 and transmitted to both Houses of Congress for its review. D.C. Law 10-151 became effective on August 20, 1994.

Legislative history of Law 16-306. — Law 16-306, the "Omnibus Public Safety Amendment Act of 2006," was introduced in Council

and assigned Bill No. 16-247, which was referred to Committee on the Judiciary. The Bill was adopted on first and second readings on June 6, 2006, and October 3, 2006, respectively.

Signed by the Mayor on October 17, 2006, it was assigned Act No. 16-482 and transmitted to both Houses of Congress for its review. D.C. Law 16-306 became effective on April 24, 2007.

CASE NOTES

ANALYSIS

In general.

Review.

Validity.

In general.

Because provisions of statutes governing offenses of possession of an unregistered firearm (UF) and unlawful possession of ammunition (UA) are “police or municipal ordinances or regulations,” prosecutorial authority lies with the Office of the Attorney General of the District of Columbia (OAG), rather than Office of the United States Attorney (USAO), irrespective of fact that violation of provisions carries a maximum penalty of both a fine and imprisonment. In re Prosecution of Hall, 31 A.3d 453, 2011 D.C. App. LEXIS 626 (2011).

A defendant charged with violation of a streamlined offense under the Omnibus Criminal Justice Reform Amendment Act still has the right to a trial with all due process rights attendant therewith. United States v. Moriba, 123 WLR 1213 (Super. Ct. 1995).

Review.

Remand was required for hearing to determine advice defense counsel gave to defendant

concerning immigration consequences of guilty plea to possession of unregistered firearm and carrying pistol without license, for purpose of ineffective assistance of counsel claim, where record was unclear regarding such advice. Kim v. United States, 792 A.2d 241, 2002 D.C. App. LEXIS 42 (2002).

Validity.

Firearms Control Regulations Act of 1975 is not unconstitutionally vague. McIntosh v. Washington, 395 A.2d 744, 1978 D.C. App. LEXIS 365 (1978).

Firearms Control Regulations Act of 1975, in imposing criminal penalties on those who fail to register firearms regardless of their knowledge of the duty to register, does not deny due process. D.C. Code § 6-1876; U.S. Const. Amend. 14. McIntosh v. Washington, 395 A.2d 744, 1978 D.C. App. LEXIS 365 (1978).

The District of Columbia City Council has the legislative authority to classify the severity of crimes within the District. Defendants charged with any of the 40 streamlined offenses under the Omnibus Criminal Justice Reform Amendment Act are not entitled to a jury trial. United States v. Moriba, 123 WLR 1201 (Super. Ct. 1995).

§ 7-2507.06a. Seizure and forfeiture of conveyances.

(a) For the purposes of this section, the term “owner” means a person with an ownership interest in the specific conveyance sought to be forfeited. The term “owner” does not include:

(1) A person with only a general unsecured interest in, or claim against, the conveyance;

(2) A bailee; or

(3) A nominee who exercises no dominion or control over the conveyance.

(b) Any conveyance, including vehicles and vessels in which any person or persons transport, possess, or conceal any firearm, as that term is defined in § 7-2501.01, or in any manner use to facilitate a violation of § 7-2502.02 or § 22-4503 or § 22-4504, shall be seized and forfeited to the District of Columbia, provided that:

(1) No conveyance used by any person as a duly licensed common carrier in the course of transacting business as a licensed common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or has knowledge of a violation of this section; and

(2) The forfeiture of a conveyance encumbered by a bona fide security

interest is subject to the interest of the secured party if the secured party neither had knowledge of, nor consented to, the illegal act giving rise to forfeiture.

(c) An innocent owner's interest in a conveyance which has been seized shall not be forfeited under this section.

(1) A person is an innocent owner if he or she establishes, by a preponderance of the evidence:

(A) That he or she did not know that a person or persons in the conveyance was transporting, possessing, or concealing any firearm or that the conveyance was involved in or was being used in the commission of any illegal act involving any firearm; or

(B) That, upon receiving knowledge of the presence of any illegal firearm in or on the conveyance or that the conveyance was being used in the commission of an illegal act involving a forfeiture, he or she took action to terminate the presence in or on the conveyance of the person, persons, or firearms.

(2)(A) A claimant who establishes a lack of knowledge under subsection (c)(1)(A) of this section shall be considered an innocent owner unless the government, in rebuttal, establishes the existence of facts and circumstances that should have created a suspicion that the conveyance was being or would be used for an illegal purpose. In that case, the claimant must establish that, in light of such facts and circumstances, he or she did all that reasonably could be expected to prevent the use of the conveyance in the commission of any such illegal act.

(B) A person who willfully blinds himself or herself to a fact shall be considered to have had knowledge of that fact.

(d) Except as otherwise expressly provided by this section, all seizures and forfeitures of conveyances under this section shall follow the procedures set forth in § 48-905.02.

(Sept. 24, 1976, D.C. Law 1-85, title VII, § 706a, as added June 3, 1997, D.C. Law 11-273, § 2, 43 DCR 6168; June 3, 1997, D.C. Law 11-274, § 19(b), 43 DCR 1232.)

Prior Codifications. — 1981 Ed., § 6-2376.1.

Emergency legislation. — For temporary addition of section, see § 2 of the Zero Tolerance for Guns Emergency Amendment Act of 1996 (D.C. Act 11-390, August 26, 1996, 43 DCR 4986), § 2 of the Zero Tolerance for Guns Congressional Adjournment Emergency Amendment Act of 1996 (D.C. Act 11-436, December 4, 1996, 43 DCR 6651), and § 2 of the Zero Tolerance for Guns Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-35, March 11, 1997, 44 DCR 1928).

Legislative history of Law 11-273. — Law 11-273, the "Zero Tolerance for Guns Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-153, which was referred to the Committee on the Judiciary. The

Bill was adopted on first and second readings on June 19, 1996, and October 1, 1996, respectively. Signed by the Mayor on October 18, 1996, it was assigned Act No. 11-431 and transmitted to both Houses of Congress for its review. D.C. Law 11-273 became effective on June 3, 1997.

Legislative history of Law 11-274. — Law 11-274, the "Sex Offender Registration Act of 1996," was introduced in Council and assigned Bill No. 11-386, which was referred to the Committee on the Judiciary. The Bill was adopted in first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-510 and transmitted to both Houses of Congress for its review. D.C. Law 11-274 became effective on June 3, 1997.

§ 7-2507.07. Public education program.

The Chief shall carry on a suitable publicity program designed to inform the citizens of the District of the provisions of this unit and the rights and obligations created by it.

(Sept. 24, 1976, D.C. Law 1-85, title VII, § 707, DCR 2464.)

Prior Codifications. — 1981 Ed., § 6-2377. legislative history of D.C. Law 1-85, see Historical and Statutory Notes following § 7-2501.01.
1973 Ed., § 6-1877.

Legislative history of Law 1-85. — For

§ 7-2507.08. Construction of unit.

Nothing in this unit shall be construed, or applied to necessarily require, or excuse noncompliance with any provision of any federal law. This unit and the penalties prescribed in § 7-2507.06, for violations of this unit, shall not supersede but shall supplement all statutes of the District and the United States in which similar conduct is prohibited or regulated.

(Sept. 24, 1976, D.C. Law 1-85, title VII, § 709, 23 DCR 2464; Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780.)

Prior Codifications. — 1981 Ed., § 6-2378.
1973 Ed., § 6-1878.

Legislative history of Law 1-85. — For legislative history of D.C. Law 1-85, see Historical and Statutory Notes following § 7-2501.01.

Legislative history of Law 2-62. — For legislative history of D.C. Law 2-62, see Historical and Statutory Notes following § 7-2501.01.

§ 7-2507.09. Applicability of District of Columbia Administrative Procedure Act.

The provisions of the District of Columbia Administrative Procedure Act (§ 2-501 et seq.) shall apply to each proceeding, decision, or other administrative action specified in this unit, unless otherwise specifically provided.

(Sept. 24, 1976, D.C. Law 1-85, title VII, § 710, 23 DCR 2464.)

Prior Codifications. — 1981 Ed., § 6-2379.
1973 Ed., § 6-1879.

Legislative history of Law 1-85. — For

legislative history of D.C. Law 1-85, see Historical and Statutory Notes following § 7-2501.01.

CASE NOTES

Validity.

Firearms Control Regulations Act of 1975 is not unconstitutionally vague. *McIntosh v. Washington*, 395 A.2d 744, 1978 D.C. App. LEXIS 365 (1978).

Firearms Control Regulations Act of 1975 is

not antithetical to Administrative Procedure Act. D.C. Code §§ 1-1509, 6-1801 et seq., 6-1820(b), 6-1846(b), 6-1879. *McIntosh v. Washington*, 395 A.2d 744, 1978 D.C. App. LEXIS 365 (1978).

§ 7-2507.10. Severability.

If any provision of this unit or the application thereof to any person or circumstance is held invalid, the remainder of this unit and the application of

such provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

(Sept. 24, 1976, D.C. Law 1-85, title VII, § 711, 23 DCR 2464.)

Prior Codifications. — 1981 Ed., § 6-2380. legislative history of D.C. Law 1-85, see Historical and Statutory Notes following § 7-2501.01.
1973 Ed., § 6-1880.

Legislative history of Law 1-85. — For

CASE NOTES

Validity.

Statutes establishing qualifications for firearms registration, that were severable from the flat ban on registering handguns that was ruled unconstitutional in the United States Supreme Court's decision in *Heller*, were compatible with

the core interest protected by the Second Amendment, and were not unconstitutional. *Lowery v. United States*, 3 A.3d 1169, 2010 D.C. App. LEXIS 511 (2010), writ of certiorari denied by 132 S. Ct. 1090, 181 L. Ed. 2d 982, 2012 U.S. LEXIS 708, 80 U.S.L.W. 3425 (U.S. 2012).

§ 7-2507.11. Rules.

The Chief, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], may issue rules to implement the provisions of this unit.

(Sept. 24, 1976, D.C. Law 1-85, title VII, § 712, as added Mar. 31, 2009, D.C. Law 17-372, § 3(q), 56 DCR 1365.)

Emergency legislation. — For temporary (90 day) addition, see § 3(q) of Firearms Registration Emergency Amendment Act of 2008 (D.C. Act 17-651, January 6, 2009, 56 DCR 911).

For temporary (90 day) additions, see § 502 of Crime Bill Emergency Amendment Act of 2009 (D.C. Act 18-129, June 29, 2009, 56 DCR 5495).

For temporary (90 day) additions, see § 205 of Omnibus Public Safety and Justice Emergency Amendment Act of 2009 (D.C. Act 18-181, August 6, 2009, 56 DCR 6903).

For temporary (90 day) amendment of section, see § 2(q) of Firearms Emergency Amendment Act of 2012 (D.C. Act 19-352, May 11, 2012, 59 DCR 5116).

For temporary (90 day) amendment of section, see § 2(q) of the Firearms Amendments Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-394, July 18, 2012, 59 DCR 8694).

Legislative history of Law 17-372. — For Law 17-372, see notes following § 7-2501.01.

Subchapter VIII. Gun Offender Registry.

§ 7-2508.01. Definitions.

For the purposes of this subchapter, the term:

(1) "Correctional facility" means any building or group of buildings and concomitant services operated as a single management unit by the Department of Corrections, or a similar federal, state, county, or local government agency, or a contractor to such an agency, for the purpose of housing and providing services to persons ordered confined pending trial or sentencing, or incarcerated following sentencing for a violation of law.

(2) "Gun offender" means a person:

(A) Convicted at any time of a gun offense in the District;

(B) Convicted at any time of a gun offense who resides in the District within the registration period established pursuant to § 7-2508.02;

(C) Who has as a mandatory condition of release a registration requirement in the District pursuant to § 7-2508.04(f).

(3) “Gun offense” means:

(A) A conviction for the sale, purchase, transfer, receipt, acquisition, possession, use, manufacture, carrying, transportation, registration, or licensing of a firearm under Chapter 45 of Title 22 [§ 22-4501 et seq.], or an attempt or conspiracy to commit any of the foregoing offenses;

(B) A conviction for violating § 7-2502.01, § 7-2504.01, § 7-2505.01, or § 7-2506.01, or an attempt or conspiracy to commit any of the foregoing offenses;

(C) Violations in other jurisdictions of any offense with an element that involves the violations listed in subparagraphs (A) or (B) of this paragraph.

(4) “Resides” means to stay overnight in the District of Columbia for an aggregate period of time exceeding 30 days in any calendar year.

(Sept. 24, 1976, D.C. Law 1-85, title VIII, § 801, as added Dec. 10, 2009, D.C. Law 18-88, § 205, 56 DCR 7413; June 3, 2011, D.C. Law 18-377, § 2(g), 58 DCR 1174.)

Effect of amendments. — D.C. Law 18-377, in pars. (2)(A) and (B), substituted “Convicted at any time” for “Convicted”; in pars. (3)(A) and (B), inserted “, or an attempt or conspiracy to commit any of the foregoing offenses”.

Temporary Amendment of Section. — Section 2(a) of D.C. Law 18-255, in pars. (2)(A) and (B), substituted “Convicted at any time” for “Convicted”.

Section 4(b) of D.C. Law 18-255 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition, see § 205 of Omnibus Public Safety and Justice Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-227, October 21, 2009, 56 DCR 8668).

For temporary (90 day) amendment of section, see § 2(a) of Gun Offender Registration Emergency Amendment Act of 2010 (D.C. Act 18-464, July 2, 2010, 57 DCR 6908).

For temporary (90 day) amendment of section, see § 2(a) of Gun Offender Registration Congressional Review Emergency Amendment Act of 2010 (D.C. Act 18-539, October 5, 2010, 57 DCR 9610).

For temporary (90 day) amendment of section, see § 2(a) of Gun Offender Registration Second Congressional Review Emergency Amendment Act of 2010 (D.C. Act 18-672, December 28, 2010, 58 DCR 126).

For temporary (90 day) amendment of sec-

tion, see § 502(g) of Public Safety Legislation Sixty-Day Layover Emergency Amendment Act of 2010 (D.C. Act 18-693, January 18, 2011, 58 DCR 640).

For temporary (90 day) amendment of section, see § 502(g) of Public Safety Legislation Sixty-Day Layover Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-45, April 20, 2011, 58 DCR 3701).

For temporary (90 day) amendment of section, see § 2(r) of Firearms Emergency Amendment Act of 2012 (D.C. Act 19-352, May 11, 2012, 59 DCR 5116).

For temporary (90 day) amendment of section, see § 2(r) of the Firearms Amendments Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-394, July 18, 2012, 59 DCR 8694).

Legislative history of Law 18-88. — Law 18-88, the “Omnibus Public Safety and Justice Amendment Act of 2009”, as introduced in Council and assigned Bill No. 18-151, which was referred to the Committee on Public Safety and the Judiciary. The bill as adopted on first and second readings on June 30, 2009, and July 31, 2009, respectively. Signed by the Mayor on August 26, 2009, it was assigned Act No. 18-189 and transmitted to both Houses of Congress for its review. D.C. Law 18-88 became effective on December 10, 2009.

Legislative history of Law 18-377. — For history of Law 18-377, see notes under § 7-2502.03.

§ 7-2508.02. Duty to register and to verify.

(a) A gun offender shall register with the Chief for a period of 2 years, unless

a longer period is required by § 7-2508.03 or § 7-2508.07(b). The offender shall register:

(1) Within 48 hours (not including a Saturday, Sunday, legal holiday, or day on which the District of Columbia government is closed) of:

(A) Release, if the gun offender receives a sentence of imprisonment;

(B) The time sentence is imposed, if the sentence does not include imprisonment;

(C) Receipt of notice of the obligation to register, if at a time other than sentencing; or

(D) Changing the place where he or she resides, works, or attends school in the District or elsewhere;

(2) By personally appearing at an office designated by the Chief to sign a statement under oath, verified by whatever documentation may be required, that provides, to the extent it is available:

(A) The gun offender's name, date of birth, sex, race, height, weight, and eye color;

(B) The address where the gun offender resides or expects to reside in the District;

(C) Any other legal names of the gun offender;

(D) Aliases of the gun offender;

(E) The jurisdiction and a description of the offense for which the gun offender was convicted and the date of conviction;

(F) Fingerprints of the gun offender;

(G) The identification number of the gun offender's driver's license or non-driver photo identification card;

(H) The name and address of any school the gun offender attends or expects to attend; and

(I) Repealed.

(b) During the period in which a gun offender is required to register under this subchapter, the gun offender shall comply with the following:

(1) Except as specified in paragraphs (2) and (3) of this subsection, no later than 20 calendar days following the one-year anniversary of the gun offender's initial registration date, the gun offender shall personally appear at such office as the Chief may direct for the purpose of verifying the information required under subsection (a) of this section.

(2) If a gun offender required to register under this subchapter is confined to any federal, state, or local correctional facility, residential treatment center, hospital, or institution throughout the 20-day period described in paragraph (1) of this subsection, the gun offender shall personally appear as required by paragraph (1) of this subsection within 48 hours of release.

(3) If a gun offender neither resides, works, nor attends school in the District of Columbia, the gun offender shall not be required to comply with paragraph (1) or (2) of this subsection.

(4) The Chief may photograph the gun offender and require the gun offender to provide such documentation as the Chief considers acceptable to verify the information provided in subsection (a)(2) of this section.

(c) The Chief shall have the authority to maintain and operate the gun offender registry for the District, including the authority to collect and

maintain gun offender information obtained pursuant to subsection (b) of this section and enter the information into appropriate record systems and databases.

(Sept. 24, 1976, D.C. Law 1-85, title VIII, § 802, as added Dec. 10, 2009, D.C. Law 18-88, § 205, 56 DCR 7413; June 3, 2011, D.C. Law 18-377, § 2(h), 58 DCR 1174.)

Effect of amendments. — D.C. Law 18-377, in the lead-in language of subsec. (a)(1), substituted “48 hours (not including a Saturday, Sunday, legal holiday, or day on which the District of Columbia government is closed) of:” for “48 hours of.”; rewrote subsec. (a)(1)(C) and repealed subsec. (a)(2)(I), which formerly read:

“(C) Remaining in the District to reside, work, or attend school after receipt of notice of the obligation to register; or”.

“(I) The name and address of the gun offender’s expected place of work, including the name and phone number of a supervisor.”

Emergency legislation. — For temporary (90 day) addition, see § 205 of Omnibus Public Safety and Justice Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-227, October 21, 2009, 56 DCR 8668).

For temporary (90 day) amendment of section, see § 502(h) of Public Safety Legislation Sixty-Day Layover Emergency Amendment Act of 2010 (D.C. Act 18-693, January 18, 2011, 58 DCR 640).

For temporary (90 day) amendment of section, see § 502(h) of Public Safety Legislation Sixty-Day Layover Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-45, April 20, 2011, 58 DCR 3701).

Legislative history of Law 18-88. — For Law 18-88, see notes following § 7-2508.01.

Legislative history of Law 18-377. — For history of Law 18-377, see notes under § 7-2502.03.

§ 7-2508.03. Registration period.

A gun offender shall comply with the registration and verification provisions required by § 7-2508.02 for a period beginning when he or she is sentenced for a gun offense and continuing until 2 years after the expiration of any time being served on probation, parole, supervised release, or conditional release, or 2 years after the gun offender is unconditionally released from a correctional facility, prison, hospital, or other place of confinement, whichever is latest. The registration period is tolled for any time the gun offender fails to register or otherwise fails to comply with the requirements of this subchapter.

(Sept. 24, 1976, D.C. Law 1-85, title VIII, § 803, as added Dec. 10, 2009, D.C. Law 18-88, § 205, 56 DCR 7413.)

Emergency legislation. — For temporary (90 day) addition, see § 205 of Omnibus Public Safety and Justice Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-227, October 21, 2009, 56 DCR 8668).

Legislative history of Law 18-88. — For Law 18-88, see notes following § 7-2508.01.

§ 7-2508.04. Certification duties of the Superior Court of the District of Columbia.

(a) Upon a defendant’s conviction for a gun offense, the Superior Court of the District of Columbia (“Court”) shall enter an order certifying that the defendant is a gun offender. The Court shall:

(1) Advise the gun offender of his or her duties under this subchapter;

(2) Order the gun offender to report to the Chief to register as required by this subchapter; and

(3) Order the gun offender to comply with the requirements of this subchapter.

(b) The Court shall provide to the Chief, and to the Court Services and Offender Supervision Agency, a copy of the certification and order, and such other records and information in its possession that will assist in the registration of the gun offender.

(c) In any case where the Court orders the release of a gun offender into the community following a period of detention, incarceration, confinement, civil commitment, or hospitalization, the Court shall provide the gun offender with a copy of the order required under subsection (a) of this section and require the gun offender to read, or have read to him or her, and sign the copy of the order.

(d)(1) For a person who has not been required to comply with the requirements of this subchapter as set forth in subsections (a) and (c) of this section, but who nevertheless qualifies and is within the period for which registration is required by this subchapter, the Court may, upon motion of the government, enter an order certifying that a person convicted of a gun offense is a gun offender and issue an order requiring the gun offender to register and to comply with the provisions of this subchapter.

(2) The certification and order shall be personally served upon the person, at which time the requirements of this subchapter shall apply, unless that person moves the Court to rescind the certification and order and the Court grants the motion.

(e) Agencies in the District of Columbia to which the probation, parole, supervised release, or conditional release of a gun offender is transferred from another jurisdiction are authorized to inform the Chief of that transfer of supervision for purposes of implementing the provisions of subsection (d) of this section.

(f) Notwithstanding the court certification requirements of this subchapter, any person convicted of a gun offense in any jurisdiction other than the District of Columbia who is ordered by competent authority in that jurisdiction to register as a gun offender in the District of Columbia shall comply with the registration and other requirements of this subchapter.

(Sept. 24, 1976, D.C. Law 1-85, title VIII, § 804, as added Dec. 10, 2009, D.C. Law 18-88, § 205, 56 DCR 7413; June 3, 2011, D.C. Law 18-377, § 2(i), 58 DCR 1174.)

Effect of amendments. — D.C. Law 18-377 rewrote subsec. (d)(1), which formerly read:

“(d)(1) For persons who have not been required to comply with the requirements of this subchapter as set forth in subsections (a) and (c) of this section, but nevertheless qualify, the Court may, upon motion of the government, enter an order certifying that a person convicted of a gun offense within the period for which registration is required by this subchapter is a gun offender and issue an order requiring

the gun offender to register and to comply with the provisions of this subchapter.”

Temporary Amendment of Section 2(b) of D.C. Law 18-255 rewrote subsec. (d)(1) to read as follows: “(d)(1) For a person who has not been required to comply with the requirements of this title as set forth in subsections (a) and (c) of this section, but who nevertheless qualifies and is within the period for which registration is required by this act, the Court may, upon motion of the government, enter an

order certifying that a person convicted of a gun offense is a gun offender and issue an order requiring the gun offender to register and to comply with the provisions of this act.”.

Section 4(b) of D.C. Law 18-255 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition, see § 205 of Omnibus Public Safety and Justice Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-227, October 21, 2009, 56 DCR 8668).

For temporary (90 day) amendment of section, see § 2(b) of Gun Offender Registration Emergency Amendment Act of 2010 (D.C. Act 18-464, July 2, 2010, 57 DCR 6908).

For temporary (90 day) amendment of section, see § 2(b) of Gun Offender Registration Congressional Review Emergency Amendment Act of 2010 (D.C. Act 18-539, October 5, 2010, 57 DCR 9610).

For temporary (90 day) amendment of section, see § 2(b) of Gun Offender Registration Second Congressional Review Emergency Amendment Act of 2010 (D.C. Act 18-672, December 28, 2010, 58 DCR 126).

For temporary (90 day) amendment of section, see § 502(i) of Public Safety Legislation Sixty-Day Layover Emergency Amendment Act of 2010 (D.C. Act 18-693, January 18, 2011, 58 DCR 640).

For temporary (90 day) amendment of section, see § 502(i) of Public Safety Legislation Sixty-Day Layover Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-45, April 20, 2011, 58 DCR 3701).

Legislative history of Law 18-88. — For Law 18-88, see notes following § 7-2508.01.

Legislative history of Law 18-377. — For history of Law 18-377, see notes under § 7-2502.03.

§ 7-2508.05. Sharing of registration information; Freedom of Information Act exception.

(a) Gun offender registration information shall not be made available except as authorized under subsection (b) of this section. No gun offender registration information shall be available as a public record under § 2-532.

(b) The Chief is authorized to make gun offender registration information available to other local, state, or federal government agencies.

(Sept. 24, 1976, D.C. Law 1-85, title VIII, § 805, as added Dec. 10, 2009, D.C. Law 18-88, § 205, 56 DCR 7413.)

Emergency legislation. — For temporary (90 day) addition, see § 205 of Omnibus Public Safety and Justice Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-227, October 21, 2009, 56 DCR 8668).

Legislative history of Law 18-88. — For Law 18-88, see notes following § 7-2508.01.

§ 7-2508.06. Rules.

The Chief, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], may issue rules and establish such forms as are necessary to implement the provisions of this subchapter.

(Sept. 24, 1976, D.C. Law 1-85, title VIII, § 806, as added Dec. 10, 2009, D.C. Law 18-88, § 205, 56 DCR 7413.)

Emergency legislation. — For temporary (90 day) addition, see § 205 of Omnibus Public Safety and Justice Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-227, October 21, 2009, 56 DCR 8668).

Legislative history of Law 18-88. — For Law 18-88, see notes following § 7-2508.01.

§ 7-2508.07. Penalties; mandatory release condition.

(a) Any knowing violation by a gun offender of this subchapter or of rules or regulations established pursuant to this subchapter, including knowingly failing to register, verify, or update information in the manner and within the time periods provided for in this subchapter, shall be a misdemeanor punishable by a fine of not more than \$1,000, imprisonment of not more than 12 months, or both.

(b) Compliance with the requirements of this subchapter, including any rules or regulations adopted by the Chief pursuant to this subchapter, shall be a mandatory condition after the expiration of any time being served on probation, parole, supervised release, or conditional release for any gun offender convicted in the District of Columbia.

(Sept. 24, 1976, D.C. Law 1-85, title VIII, § 807, as added Dec. 10, 2009, D.C. Law 18-88, § 205, 56 DCR 7413.)

Emergency legislation. — For temporary (90 day) addition, see § 205 of Omnibus Public Safety and Justice Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-227, October 21, 2009, 56 DCR 8668).

Legislative history of Law 18-88. — For Law 18-88, see notes following § 7-2508.01.

Unit B. Strict Liability for Illegal Sale and Distribution of Firearms.

§ 7-2531.01. Definitions.

For the purposes of this unit, the term:

(1) “Dealer” means:

(A) Any person engaged in the business of selling firearms at wholesale or retail;

(B) Any person engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms; or

(C) Any person who is a pawnbroker who takes or receives by way of pledge or pawn, any firearm as security for the payment or repayment of money.

(2) “Engaged in the business” means:

(A) A person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms. The term “engaged in business” shall not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of this personal collection of firearms; or

(B) A person who devotes time, attention, and labor to importing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms imported.

(3) “Firearm” shall have the same meaning as in § 7-2501.01(9).

(4) “Illegal sale” means:

(A) Failure to establish proof of the purchaser's residence in a jurisdiction where the purchase of the weapon is legal or ignoring proof of the purchaser's residence in the District of Columbia;

(B) Failure to comply with District of Columbia registration and waiting requirements prior to delivery of the firearm to the purchaser when proof of District of Columbia residence is provided;

(C) Failure to maintain full, complete, and accurate records of firearm sales as required by local, state, and federal law; or

(D) Knowingly and willfully maintaining false records with the intent to misrepresent the name and address of persons purchasing firearms, or the type of firearm sold to those persons.

(5) "Importer" means any person engaged in the business of importing or bringing firearms or ammunition into the United States for purposes of sale or distribution.

(6) "Law enforcement agency" means a federal, state, or local law enforcement agency, state militia, or an agency of the United States government.

(7) "Law enforcement officer" means any employee or agent of a law enforcement agency who is authorized to use a firearm in the course of employment.

(8) "Manufacturer" means any person in business to manufacture or assemble a firearm or ammunition for sale or distribution.

(9) "Pawnbroker" means any person whose business or occupation includes the taking or receiving, by way of pledge or pawn, of any firearm as security for the payment or repayment of money.

(June 11, 1992, D.C. Law 9-115, § 2, 39 DCR 3182.)

Prior Codifications. — 1981 Ed., § 6-2381.

Legislative history of Law 9-115. — Law 9-115, the "Illegal Firearm Sale and Distribution Strict Liability Act of 1992," was introduced in Council and assigned Bill No. 9-87, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on March 3, 1992, and April 7, 1992, respectively. Signed by the Mayor on April 24, 1992, it was assigned Act No. 9-189 and transmitted to both Houses of Congress for its review. D.C. Law 9-115 became effective on June 11, 1992.

Delegation of Authority. — Delegation of authority pursuant to D.C. Law 9-115, the

"Illegal Firearm Sale and Distribution Strict Liability Act of 1992", see Mayor's Order 94-72, March 15, 1994 (41 DCR 1571).

Editor's notes. — Application of 9-115: Section 7 of D.C. Law 9-115 provided that the act shall only apply to the discharge of a firearm in the District of Columbia that is sold, loaned, leased, or rented after the effective date of this act.

Mayor authorized to issue rules: Section 6 of D.C. Law 9-115 provided that the Mayor, pursuant to subchapter I of Chapter 5 of Title 2, shall issue rules to implement the provisions of the act.

§ 7-2531.02. Liability.

(a) Any manufacturer, importer, or dealer of a firearm who can be shown by a preponderance of the evidence to have knowingly and willfully engaged in the illegal sale of a firearm shall be held strictly liable in tort, without regard to fault and without regard to either: (1) an intent to interfere with a legally protected interest; or (2) a breach of duty to exercise reasonable care, for all direct and consequential damages that arise from bodily injury or death if the bodily injury or death proximately results from the discharge of the firearm in

the District of Columbia, regardless of whether or not the person operating the firearm is the original, illegal purchaser.

(b) Any individual who can be shown by a preponderance of the evidence to have knowingly and willfully engaged in the illegal sale, loan, lease, or rental of a firearm for money or anything of value shall be held strictly liable in tort, without regard to fault and without regard to either: (1) an intent to interfere with a legally protected interest; or (2) a breach of duty to exercise reasonable care, for all direct and consequential damages that arise from bodily injury or death if the bodily injury or death proximately results from the discharge of the firearm in the District of Columbia regardless of whether or not the person operating the firearm is the original, illegal purchaser.

(c) Nothing in this unit shall relieve from liability any person who commits a crime, is negligent, or who might otherwise be liable for acts committed with the firearm.

(June 11, 1992, D.C. Law 9-115, § 3, 39 DCR 3182.)

Prior Codifications. — 1981 Ed., § 6-2382.

Legislative history of Law 9-115. — For legislative history of D.C. Law 9-115, see Historical and Statutory Notes following § 7-2531.01.

Editor's notes. — Application of Law 9-115: See Historical and Statutory Notes following § 7-2531.01.

§ 7-2531.03. Exemptions.

(a) No firearm originally distributed to a law enforcement agency or a law enforcement officer shall provide the basis for liability under this unit.

(b) No action may be brought pursuant to this unit by a person who can be shown by a preponderance of the evidence to have committed a self-inflicted injury or by a person injured by a firearm while committing a crime, attempting to commit a crime, engaged in criminal activity, or engaged in a delinquent act.

(c) No action may be brought pursuant to this unit by a person who can be shown by a preponderance of the evidence to be engaged in the sale or distribution of illegal narcotics.

(d) No action may be brought pursuant to this unit by a person who either: (1) assumed the risk of the injury that occurred; or (2) negligently contributed to the injury that occurred.

(June 11, 1992, D.C. Law 9-115, § 4, 39 DCR 3182.)

Prior Codifications. — 1981 Ed., § 6-2383.

Legislative history of Law 9-115. — For legislative history of D.C. Law 9-115, see Historical and Statutory Notes following § 7-2531.01.

Editor's notes. — Application of Law 9-115: See Historical and Statutory Notes following § 7-2531.01.

CASE NOTES

ANALYSIS

Construction and application.
Jurisdiction.

Construction and application.

Special conservator of the peace (SCOP) appointed under Virginia law could not demonstrate that either the Law Enforcement Officer Safety Act (LEOSA) or the District of Columbia code provision exempting law enforcement officers from the code's firearms license provisions were so unambiguous that a reasonable officer could not believe that SCOP was subject to the firearms laws, as required to establish § 1983 claim that the District would violate his Fourth Amendment rights by arresting and prosecuting him for carrying an unregistered firearm in the District; SCOP was not an employee of a governmental agency. *Ord v. District of Columbia*, 810 F.Supp.2d 261, 2011 U.S. Dist. LEXIS 104204 (2011), affirmed by 2012 U.S. App. LEXIS 4317 (D.C. Cir. Mar. 1, 2012).

diction over common law claims of malicious prosecution and intentional infliction of emotional distress brought by a special conservator of the peace (SCOP), who was appointed under Virginia law, against the District of Columbia in connection with warrant for his arrest for carrying an unregistered firearm in the District, which was then nullified without any further action, where court had granted summary judgment to the District of Columbia on SCOP's federal-law claims, and the common law claims involved the novel interpretation of whether a SCOP qualified as an "officer" for purposes of District of Columbia Code provision exempting law enforcement officers from the code's firearm's license provisions. *Ord v. District of Columbia*, 810 F.Supp.2d 261, 2011 U.S. Dist. LEXIS 104204 (2011), affirmed by 2012 U.S. App. LEXIS 4317 (D.C. Cir. Mar. 1, 2012).

Jurisdiction.

Court would not exercise supplemental juris-

§ 7-2531.04. Firearms Bounty Fund.

(a) There is established a fund to be known as the Firearms Bounty Fund ("Fund") to be administered by the Metropolitan Police Department. The Fund shall be operated as a proprietary fund and shall consist of monies appropriated to the Fund, federal grants to the Fund, or private monies donated to the Fund.

(b) Disbursements from the Fund shall be used exclusively for the payment of cash rewards to persons who provide District of Columbia law enforcement agencies with tips that lead to the adjudication or conviction of:

(1) A person or entity engaged in the illegal sale, rental, lease, or loan of a firearm in exchange for money or other thing of value; or

(2) A person who has committed a crime with a firearm.

(c) The amount of each cash reward shall be determined at the discretion of the Chief of the Metropolitan Police Department and the cash reward may range up to \$100,000 per tip.

(d) The Chief of the Metropolitan Police Department shall report annually to the Mayor and Council all income and expenditures of the Fund.

(e) The Mayor, by a proposed notice to the Council, may terminate the Fund if the Mayor determines that the Fund is no longer necessary to pay cash rewards.

(f) If monies exist in the Fund at the time of its termination, the monies shall be deposited in the General Fund of the District of Columbia.

(g) The proposed notice to terminate the Fund shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or

disapprove by resolution within the 45-day review period, the proposed notice to terminate the Fund shall be deemed approved.

(June 11, 1992, D.C. Law 9-115, § 5, 39 DCR 3182.)

Prior Codifications. — 1981 Ed., § 6-2384.
Legislative history of Law 9-115. — For legislative history of D.C. Law 9-115, see Historical and Statutory Notes following § 7-2531.01.

Editor's notes. — Application of Law 9-115: See Historical and Statutory Notes following § 7-2531.01.

Unit C. Assault Weapons Manufacturing Strict Liability.

§ 7-2551.01. Definitions.

For the purposes of this unit, the term:

(1) "Assault weapon" shall have the same meaning as provided in § 7-2501.01(3A).

(2) "Handgun" means a firearm with a barrel less than 12 inches in length at the time of manufacture.

(3) "Dealer" and "importer" shall have the same meaning as in 18 U.S.C. § 921.

(4) "Machine gun" shall have the same meaning as in paragraph (10) of § 7-2501.01.

(5) "Manufacturer" means any person in business to manufacture or assemble a firearm or ammunition for sale or distribution.

(6) "Law enforcement agency" means a federal, state, or local law enforcement agency, state militia, or an agency of the United States government.

(7) "Law enforcement officer" means any officer or agent of an agency defined in paragraph (6) of this section who is authorized to use a handgun or machine gun in the course of his or her work.

(Mar. 6, 1991, D.C. Law 8-263, § 3, 37 DCR 8482; Mar. 31, 2009, D.C. Law 17-372, § 4, 56 DCR 1365.)

Prior Codifications. — 1981 Ed., § 6-2391.
Effect of amendments. — D.C. Law 17-372 rewrote par. (1).

Temporary Amendment of Section. — Repeal and revival of Law 8-263: D.C. Law 8-263 was temporarily repealed by Emergency Act 9-1, § 2, the Assault Weapon Manufacturing Strict Liability Act of 1990 Emergency Repealer Act of 1991 (D.C. Act 9-1, February 15, 1991, 38 DCR 1457). Section 2 of D.C. Law 9-3 temporarily repealed D.C. Law 8-263. Section 3(b) of D.C. Law 9-3 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Assault Weapon Manufacturing Strict Liability Act of 1990 Repealer Act of 1991, whichever occurs first.

Emergency legislation. — For temporary (90 day) amendment of section, see § 4 of Firearms Registration Emergency Amendment

Act of 2008 (D.C. Act 17-651, January 6, 2009, 56 DCR 911).

Legislative history of Law 8-263. — Law 8-263, the "Assault Weapon Manufacturing Strict Liability Act of 1990," was introduced in Council and assigned Bill No. 8-132, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 27, 1989, and December 11, 1990, respectively. Signed by the Mayor on December 17, 1990, it was assigned Act No. 8-289 and transmitted to both Houses of Congress for its review. D.C. Law 8-263 became effective March 6, 1991.

Legislative history of Law 17-372. — For Law 17-372, see notes following § 7-2501.01.

Effective date. — Pursuant to the Court's holding in *Bliley v. Kelly*, 23 F.3d 507 (D.C.Cir.1994), the Congressional review period for the Assault Weapon Manufacturing

Strict Liability Act of 1990, began to run on November 19, 1991, and the act took effect on February 29, 1992.

Editor's notes. — Application of Law 8-263: Section 6 of D.C. Law 8-263, as amended by § 3(b) of D.C. Law 10-194, provided that the act shall apply only to the discharge of an assault weapon that is manufactured, imported, or distributed after Mar. 6, 1991, and to the discharge of a machine gun that is manufactured, imported, or distributed after Oct. 7, 1994.

Repeal of Act 9-32: D.C. Act 9-32, the Assault Weapon Manufacturing Strict Liability Act of 1990 Repealer Act of 1991, May 17, 1991, 38 DCR 3380, was repealed by Referendum 006, certified by the Board of Elections and Ethics November 18, 1991.

Findings of Council: Section 2 of D.C. Law 8-263 provided findings of Council.

CASE NOTES

Construction with other laws.

Retroactive application of Protection of Lawful Commerce in Arms Act (PLCAA) to require dismissal of pending action brought by District and individuals alleging weapons manufacturers and distributors violated the District's Assault Weapons Manufacturing Strict Liability Act (SLA) did not violate due process, though the pending action was a species of property protected by due process, as the District and individuals had not obtained a judgment in the action and thus did not have a vested right, and District and individual received all the process that was due when the PLCAA barred pending actions such as theirs from proceeding as a rational means to give comprehensive effect to a new law that Congress considered salutary. *District of Columbia v. Beretta U.S.A. Corp.*, 940 A.2d 163, 2008 D.C. App. LEXIS 4 (2008), writ of certiorari denied by 556 U.S. 1104, 129 S. Ct. 1579, 173 L. Ed. 2d 675, 2009 U.S. LEXIS 1922, 77 U.S.L.W. 3505 (2009).

The Protection of Lawful Commerce in Arms Act (PLCAA) did not violate the principle of separation of powers by usurping a judicial function and directing a court to take a specific position in pending action brought by District and individuals alleging that weapon manufacturers and distributors violated the District's Assault Weapons Manufacturing Strict Liability Act (SLA), as the PLCAA merely set forth new standards that had to be met before a case could be brought or a pending one could proceed against the manufacturer or seller of a firearm

for damages resulting from a third person's use of the firearm, and nothing within the PLCAA controlled a court's determination as to whether particular cases satisfied the new legal standard or its exceptions. *District of Columbia v. Beretta U.S.A. Corp.*, 940 A.2d 163, 2008 D.C. App. LEXIS 4 (2008), writ of certiorari denied by 556 U.S. 1104, 129 S. Ct. 1579, 173 L. Ed. 2d 675, 2009 U.S. LEXIS 1922, 77 U.S.L.W. 3505 (2009).

Strict liability action brought by District and individuals against gun manufacturers and distributors under the District's Assault Weapons Manufacturing Strict Liability Act (SLA) was not an action alleging a violation of a statute applicable to the sale or marketing of a firearm, and thus was a "qualified civil liability action" that was barred by the Protection of Lawful Commerce in Arms Act (PLCAA); action alleged that manufacturers and distributors violated the SLA whenever a person was killed or injured by the discharge of an assault weapon regardless of the care taken in the manufacturer or sale of the weapon, SLA imposed no duty on manufacturers or sellers to operate in any particular manner or according to any standards of care or reasonableness, and allowing action to proceed would frustrate the clear intent of the PLCAA. *District of Columbia v. Beretta U.S.A. Corp.*, 940 A.2d 163, 2008 D.C. App. LEXIS 4 (2008), writ of certiorari denied by 556 U.S. 1104, 129 S. Ct. 1579, 173 L. Ed. 2d 675, 2009 U.S. LEXIS 1922, 77 U.S.L.W. 3505 (2009).

§ 7-2551.02. Liability.

Any manufacturer, importer, or dealer of an assault weapon or machine gun shall be held strictly liable in tort, without regard to fault or proof of defect, for all direct and consequential damages that arise from bodily injury or death if the bodily injury or death proximately results from the discharge of the assault weapon or machine gun in the District of Columbia.

(Mar. 6, 1991, D.C. Law 8-263, § 4, 37 DCR 8482; Oct. 7, 1994, D.C. Law 10-194, § 3(a), 41 DCR 4283.)

Prior Codifications. — 1981 Ed., § 6-2392.
Legislative history of Law 8-263. — For legislative history of D.C. Law 8-263, see Historical and Statutory Notes following § 7-2551.01.

Legislative history of Law 10-194. — Law 10-194, the “Repeat Offender Life Without Parole Amendment Act of 1994,” was introduced in Council and assigned Bill No. 10-478, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 7, 1994, and June 21, 1994, respectively. Signed by the Mayor on June 21, 1994, it was assigned Act No. 10-254 and trans-

mitted to both Houses of Congress for its review. D.C. Law 10-194 became effective on October 7, 1994.

Effective date. — Pursuant to the Court’s holding in *Bliley v. Kelly*, 23 F.3d 507 (D.C.Cir.1994), the Congressional review period for the Assault Weapon Manufacturing Strict Liability Act of 1990, began to run on November 19, 1991, and the act took effect on February 29, 1992.

Editor’s notes. — Application of Law 8-263: See Historical and Statutory Notes following § 7-2551.01.

CASE NOTES

ANALYSIS

Construction and application.

In general.

Jurisdiction.

Parties.

Pleadings.

Validity.

Construction and application.

District of Columbia Assault Weapons Manufacturing Strict Liability Act (SLA) was not a predicate exception statute within the meaning of an exception in the Protection of Lawful Commerce in Arms Act (PLCAA) providing that a prohibited “qualified civil liability action” did not include an action in which a manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief was sought; the manufacturer could not be said to have violated the SLA simply by lawfully selling a gun to a buyer. *Estate of Charlot v. Bushmaster Firearms, Inc.*, 628 F.Supp.2d 174, 2009 U.S. Dist. LEXIS 54018 (2009).

In general.

Liability-limiting standards of duty, foreseeability, and causal remoteness would not be relaxed, so as to allow District of Columbia and individuals to bring public nuisance claim against gun manufacturers and distributors, relating to injuries inflicted by gun users; public nuisance liability would involve large indeterminate class of plaintiffs and indeterminate class of defendants whose liability might have little relationship to social benefits of controlling illegal guns, and District of Columbia Council had intervened precisely in such area by enacting strict liability statute governing manufacture and sale of subclass of firearms, i.e., assault weapons, whose lethal character, in its judgment, outweighed any social utility they might have. *District of Columbia v. Beretta*,

U.S.A., Corp., 872 A.2d 633, 2005 D.C. App. LEXIS 206 (2005), writ of certiorari denied by 546 U.S. 928, 126 S. Ct. 399, 163 L. Ed. 2d 277, 2005 U.S. LEXIS 7205, 74 U.S.L.W. 3212 (2005).

Liability-limiting standards of duty, foreseeability, and causal remoteness, including a plaintiff’s burden of establishing, by precise proof, that third party’s criminal act was so foreseeable that a duty arose to guard against it, would not be relaxed, in District of Columbia’s and individuals’ action against gun manufacturers and distributors for negligent distribution of guns, relating to injuries inflicted by gun users; such liability would involve large indeterminate class of plaintiffs and indeterminate class of defendants whose liability might have little relationship to social benefits of controlling illegal guns, and District of Columbia Council had intervened precisely in such area by enacting strict liability statute governing manufacture and sale of subclass of firearms, i.e., assault weapons, whose lethal character, in its judgment, outweighed any social utility they might have. *District of Columbia v. Beretta, U.S.A., Corp.*, 872 A.2d 633, 2005 D.C. App. LEXIS 206 (2005), writ of certiorari denied by 546 U.S. 928, 126 S. Ct. 399, 163 L. Ed. 2d 277, 2005 U.S. LEXIS 7205, 74 U.S.L.W. 3212 (2005).

Jurisdiction.

District court’s abstention from exercise of federal jurisdiction over action against gun manufacturers, brought pursuant to District of Columbia’s Assault Weapons Manufacturing Strict Liability Act, that was simultaneously being litigated in the Superior Court of the District of Columbia, was warranted; abstention would avoid piecemeal litigation, superior court was where first action was filed and it had made more progress on action than federal court, action involved difficult interpretation of District of Columbia law, and superior court could adequately protect parties’ rights. *Fos-*

ter-El v. Beretta U.S.A. Corp., 163 F.Supp.2d 67, 2001 U.S. Dist. LEXIS 16132 (2001).

Parties.

Assault Weapon Manufacturing Strict Liability Act (SLA) confers right of action on individuals who are injured, but not on District of Columbia; Act makes manufacturers and others strictly liable in tort for all direct and consequential damages that arise from bodily injury or death if bodily injury or death proximately results from discharge of one of the enumerated firearms, but bodily injury or death can happen only to individual persons, not corporate entities. District of Columbia v. Beretta, U.S.A., Corp., 872 A.2d 633, 2005 D.C. App. LEXIS 206 (2005), writ of certiorari denied by 546 U.S. 928, 126 S. Ct. 399, 163 L. Ed. 2d 277, 2005 U.S. LEXIS 7205, 74 U.S.L.W. 3212 (2005).

Pleadings.

Individuals suing gun manufacturers and distributors for strict liability in tort under Assault Weapon Manufacturing Strict Liability Act (SLA) were not required, at early stage of proceedings, to plead with particularity the assault weapons or machine guns that caused their injuries and the manufacturers of those weapons or guns, in order to survive a motion to dismiss for failure to state a claim; several avenues for linking firearms to particular manufacturers might be open in discovery, and those avenues could not be rejected at motion to dismiss phase even if they seemed speculative. District of Columbia v. Beretta, U.S.A., Corp., 872 A.2d 633, 2005 D.C. App. LEXIS 206 (2005), writ of certiorari denied by 546 U.S. 928, 126 S. Ct. 399, 163 L. Ed. 2d 277, 2005 U.S. LEXIS 7205, 74 U.S.L.W. 3212 (2005).

Validity.

District of Columbia's Assault Weapon Manufacturing Strict Liability Act (SLA), conferring on individuals injured by gun users a right of action for strict liability in tort against gun manufacturers and distributors, did not discriminate against interstate commerce, as element of Commerce Clause analysis; there was no economic protectionism, since there were no legal manufacturers, distributors, or sellers of assault weapons and machine guns in District of Columbia. District of Columbia v. Beretta, U.S.A., Corp., 872 A.2d 633, 2005 D.C. App. LEXIS 206 (2005), writ of certiorari denied by 546 U.S. 928, 126 S. Ct. 399, 163 L. Ed. 2d 277, 2005 U.S. LEXIS 7205, 74 U.S.L.W. 3212 (2005).

Assault Weapon Manufacturing Strict Liability Act (SLA), conferring on individuals injured by gun users a right of action for strict liability in tort against gun manufacturers and distributors, did not violate due process; no due process issue was raised by legislation seeking to redress injuries suffered by District of Columbia residents and visitors resulting from manufacture and distribution of particular class of firearms whose lethal nature far outweighed their utility. District of Columbia v. Beretta, U.S.A., Corp., 872 A.2d 633, 2005 D.C. App. LEXIS 206 (2005), writ of certiorari denied by 546 U.S. 928, 126 S. Ct. 399, 163 L. Ed. 2d 277, 2005 U.S. LEXIS 7205, 74 U.S.L.W. 3212 (2005).

Under Commerce Clause analysis, District of Columbia's Assault Weapon Manufacturing Strict Liability Act (SLA) did not impose burden on interstate commerce that was clearly excessive in relation to putative local benefits; Act addressed pressing concern for public safety by giving innocent victims of gun violence in District of Columbia a cause of action for strict liability in tort against manufacturers or dealers for injuries caused by particularly dangerous firearms whose destructiveness far outweighed any legitimate utility they had, the only firearms classified as abnormally and unreasonably dangerous were those designed essentially to kill or intimidate, and Act required link between specific manufacturer and the gun that caused the injury. District of Columbia v. Beretta, U.S.A., Corp., 872 A.2d 633, 2005 D.C. App. LEXIS 206 (2005), writ of certiorari denied by 546 U.S. 928, 126 S. Ct. 399, 163 L. Ed. 2d 277, 2005 U.S. LEXIS 7205, 74 U.S.L.W. 3212 (2005).

District of Columbia's Assault Weapon Manufacturing Strict Liability Act (SLA), conferring on individuals injured by gun users a right of action for strict liability in tort against gun manufacturers and distributors, did not directly regulate interstate commerce, as element of Commerce Clause analysis; Act merely imposed liability in tort for harm caused by abnormally dangerous subset of firearms and limited the right of action to injuries incurred in District of Columbia, and while Act could cause effects outside District if manufacturers altered their business practices to avoid liability, such effects were not inevitable and they related to limited class of products. District of Columbia v. Beretta, U.S.A., Corp., 872 A.2d 633, 2005 D.C. App. LEXIS 206 (2005), writ of certiorari denied by 546 U.S. 928, 126 S. Ct. 399, 163 L. Ed. 2d 277, 2005 U.S. LEXIS 7205, 74 U.S.L.W. 3212 (2005).

§ 7-2551.03. Exemptions.

(a) No assault weapon originally distributed to a law enforcement agency or a law enforcement officer shall provide the basis for liability under this unit.

(b) No action may be brought pursuant to this unit by a person injured by an assault weapon while committing a crime.

(c) This section shall not operate to limit in scope any cause of action, other than that provided by this unit, available to a person injured by an assault weapon.

(d) Any defense that is available in a strict liability action shall be available as a defense under this unit.

(e) Recovery shall not be allowed under this unit for a self-inflicted injury that results from a reckless, wanton, or willful discharge of an assault weapon.

(Mar. 6, 1991, D.C. Law 8-263, § 5, 37 DCR 8482.)

Prior Codifications. — 1981 Ed., § 6-2393.

Legislative history of Law 8-263. — For legislative history of D.C. Law 8-263, see Historical and Statutory Notes following § 7-2551.01.

Effective date. — Pursuant to the Court's holding in *Bliley v. Kelly*, 23 F.3d 507 (D.C.Cir.1994), the Congressional review pe-

riod for the Assault Weapon Manufacturing Strict Liability Act of 1990, began to run on November 19, 1991, and the act took effect on February 29, 1992.

Editor's notes. — Application of Law 8-263: See Historical and Statutory Notes following § 7-2551.01.

CASE NOTES

In general.

Assault Weapon Manufacturing Strict Liability Act (SLA) confers right of action on individuals who are injured, but not on District of Columbia; Act makes manufacturers and others strictly liable in tort for all direct and consequential damages that arise from bodily injury or death if bodily injury or death proximately results from discharge of one of the

enumerated firearms, but bodily injury or death can happen only to individual persons, not corporate entities. *District of Columbia v. Beretta, U.S.A., Corp.*, 872 A.2d 633, 2005 D.C. App. LEXIS 206 (2005), writ of certiorari denied by 546 U.S. 928, 126 S. Ct. 399, 163 L. Ed. 2d 277, 2005 U.S. LEXIS 7205, 74 U.S.L.W. 3212 (2005).

CHAPTER 26. REPORTING OF INJURIES CAUSED BY FIREARMS OR OTHER DANGEROUS WEAPONS.

Sec.

7-2601. Reports by physicians and institutions required.

Sec.

7-2602. Nature and contents of reports.
7-2603. Immunity from liability.

§ 7-2601. Reports by physicians and institutions required.

Any physician in the District of Columbia, including persons licensed under Chapter 12 of Title 3, having reasonable cause to believe that a person brought to him or coming before him for examination, care, or treatment has suffered injury caused by a firearm, whether self-inflicted, accidental, or occurring during the commission of a crime, or has suffered injury caused by any dangerous weapon in the commission of a crime, shall report or cause reports to be made in accordance with this chapter; provided, that when a physician in the performance of service as a member of the staff of a hospital or similar institution attends any person so injured, he shall notify the person in charge of the hospital or institution or his designated agent who shall report or cause reports to be made in accordance with this chapter.

(Nov. 6, 1966, 80 Stat. 1355, Pub. L. 89-776, § 1; May 10, 1989, D.C. Law 7-231, § 7, 36 DCR 492.)

Prior Codifications. — 1981 Ed., § 2-1361. 1973 Ed., § 2-181.

Legislative history of Law 7-231. — Law 7-231, the “Technical Amendments Act of 1988,” was introduced in Council and assigned Bill No. 7-586, which was referred to the Committee

of the Whole. The Bill was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-285 and transmitted to both Houses of Congress for its review.

CASE NOTES

Legislative intent.

Congress intended for certain medical information regarding gunshot injuries to be protected by the physician-patient privilege of § 14-307(a), and therefore considered such in-

formation confidential, even though it has to be disclosed to the police pursuant to the requirements of the Firearms Reporting Statutes (§ 2-1361 et seq.). *United States v. Jackson*, 121 WLR 849 (Super. Ct. 1993).

§ 7-2602. Nature and contents of reports.

An oral report shall be made immediately by telephone or otherwise, and followed as soon thereafter as possible by a report in writing, to the Metropolitan Police Department of the District of Columbia. Such reports shall contain, if readily available, the name, address, and age of the injured person, and shall also contain the nature and extent of the person's injuries, and any other information which the physician or other person required to make the report believes might be helpful in establishing the cause of the injuries and the identity of the person who caused the injuries.

(Nov. 6, 1966, 80 Stat. 1355, Pub. L. 89-775, § 2.)

Prior Codifications. — 1981 Ed., § 2-1362. 1973 Ed., § 2-182.

CASE NOTES

Legislative intent.

Congress intended for certain medical information regarding gunshot injuries to be protected by the physician-patient privilege of § 14-307(a), and therefore considered such in-

formation confidential, even though it has to be disclosed to the police pursuant to the requirements of the Firearms Reporting Statutes (§ 2-1361 et seq.). *United States v. Jackson*, 121 WLR 849 (Super. Ct. 1993).

§ 7-2603. Immunity from liability.

Any person, hospital, or institution participating in good faith in the making of a report pursuant to this chapter shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed with respect to the making of such report. Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from such report.

(Nov. 6, 1966, 80 Stat. 1355, Pub. L. 89-776, § 3.)

Prior Codifications. — 1981 Ed., § 2-1363. 1973 Ed., § 2-183.

CHAPTER 27. HEALTH REGULATIONS FOR FEDERAL GOVERNMENT RESTAURANTS.

Sec.

7-2701. Health regulations applicable to fed-

eral government restaurants; exceptions.

§ 7-2701. Health regulations applicable to federal government restaurants; exceptions.

(a) The regulations now or hereafter adopted or promulgated by the Mayor of the District of Columbia or the Council of the District of Columbia for the protection of health, including the penalty provisions of such regulations, shall extend and apply to all restaurants, coffee shops, cafeterias, short-order cafes, luncheonettes, soda fountains, and all other eating and drinking establishments, operated within the District of Columbia on premises owned or held under lease by the government of the United States or any federal department or agency, irrespective of whether such establishments are operated by the United States or any federal department or agency or by any other person, firm, association, or corporation, and also irrespective of whether such establishments are operated for profit or otherwise.

(b) This section shall not apply to the United States Senate and House of Representatives restaurants.

(Dec. 20, 1944, 58 Stat. 826, ch. 613.)

Prior Codifications. — 1981 Ed., § 6-1301. 1973 Ed., § 6-1101.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Sections 401 and 402 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commis-

sioner as provided in § 406 of the Plan. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

CHAPTER 28. SECURITY AND FIRE ALARM SYSTEMS REGULATIONS.

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| Sec. | Sec. |
| 7-2801. Purpose. | 7-2809. Exceptions. |
| 7-2802. Definitions. | 7-2810. Inspections. |
| 7-2803. Prohibition of prerecorded transmittals. | 7-2811. Penalties generally. |
| 7-2804. Licensing of alarm dealers. | 7-2812. Notice of violation. |
| 7-2805. Licensing of alarm agents. | 7-2813. Trial. |
| 7-2806. Duties of alarm dealers. | 7-2814. Collection of fines and fees. |
| 7-2807. Duties of security alarm users. | 7-2815. Miscellaneous provisions. |
| 7-2808. Standards for security and fire alarm systems. | |

§ 7-2801. Purpose.

The purpose of this chapter is to regulate the sale, lease, rental, installation, service, repair, maintenance, and use of security or fire alarm systems and components thereof, and to license security or fire alarm dealers and agents within the boundaries of the District of Columbia.

(Sept. 26, 1980, D.C. Law 3-107, § 2, 27 DCR 3760; Mar. 29, 1988, D.C. Law 7-99, § 2(c), 35 DCR 1051.)

Prior Codifications. — 1981 Ed., § 6-3101.
Legislative history of Law 3-107. — Law 3-107, the “Security and Fire Alarm Systems Regulations Act of 1980,” was introduced in Council and assigned Bill No. 3-67, which was referred to the Committee on the Judiciary. The Bill was adopted on first, amended first and second readings on July 1, 1980, July 15, 1980 and July 29, 1980, respectively. Signed by the Mayor on July 31, 1980, it was assigned Act No. 3-232 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-99. — Law 7-99, the “Fire Alarm Systems Regulations Amendment Act of 1987,” was introduced in Council and assigned Bill No. 7-91, which was referred to the Committee on Judiciary. The Bill was adopted on first and second readings on January 5, 1988 and January 19, 1988, respectively. Signed by the Mayor on February 9, 1988, it was assigned Act No. 7-143 and transmitted to both Houses of Congress for its review.

§ 7-2802. Definitions.

As used in this chapter, the term:

- (1) “Alarm agent” means any employee of an alarm dealer whose duties include the installation, inspection, maintenance, service, or repair of alarm systems.
- (2) “Central alarm station” means a facility operated by an alarm dealer for the purpose of receiving alarm signals from a subscriber and relaying information concerning such signals to the Metropolitan Police Department or the District of Columbia Fire Department for response to the scene.
- (3) “Chief of Police” means the Chief of Police of the Metropolitan Police Department.
- (4) “Day” means calendar day, unless otherwise defined.
- (5) “District” means the District of Columbia government.
- (6) “False alarm” means any alarm signal communicated to the Metropolitan Police Department or the District of Columbia Fire Department that is not in response to an actual or threatened fire, an actual or attempted burglary, a holdup, an assault, or an unlawful entry requiring an immediate police or fire

department response. The term "false alarm" shall include a negligently or accidentally activated signal; a signal that is the result of faulty, malfunctioning, or improperly installed or maintained equipment; and a signal that is purposely activated to summon the Metropolitan Police Department or the District of Columbia Fire Department in non-emergency situations. The term "false alarm" shall not include a signal willfully activated by an alarm user upon a good faith belief that an actual or threatened fire, an actual or attempted burglary, a holdup, an assault, or an unlawful entry is about to occur or a signal activated by unusually severe weather conditions or other causes, that is identified and determined by the Mayor to be beyond the control of the user or of the alarm dealer.

(6a) "Fire Chief" means the Chief of the District of Columbia Fire Department.

(6b) "Fire Department" means the District of Columbia Fire Department.

(7) "Mayor" means the Mayor of the District of Columbia or the Mayor's designated agent.

(8) "Metropolitan Police Department" means the Metropolitan Police Department of the District of Columbia.

(9) "Notice" means written notice, served personally upon the addressee or a representative designated by him or by law to receive service of papers, or mailed by United States mail, postage prepaid, addressed to the person to be notified at his last known address. Service of such notice shall be effective upon completion of personal service, or upon placing the same in the custody of the United States Postal Service for delivery. Proof of service may be by written acknowledgment of the party served or his or her representative, by return receipt if served by registered or certified mail, or by certificate of the person making the service personally or by mail. The term "notice" shall not have the above meaning when used in the term "notice of violation".

(10) "Person" means any individual, firm, partnership, association, company, corporation, or organization of any kind.

(11) "Scene" means the premises upon which a security alarm is located.

(12) "Alarm dealer" means any person engaged in the business of selling, leasing, renting, installing, inspecting, maintaining, servicing, or repairing alarm systems or components thereof, or receiving alarm signals from a subscriber and relaying information concerning such signals to the Metropolitan Police Department or District of Columbia Fire Department for response to the scene.

(13) "Alarm system" means any device or system that transmits a signal visibly, audibly, electronically, mechanically, or by combination of these methods to indicate an actual or threatened fire, an actual or attempted burglary, a holdup, an assault, or an unlawful entry at a premises, requiring an immediate response to the scene by the Metropolitan Police Department or the District of Columbia Fire Department. The term "alarm system" shall include a service activated automatically, such as a burglary or fire alarm, and a device activated manually, such as a holdup alarm, but shall not include telephonic lines maintained and operated by public utilities under the regulation of the Public Service Commission over which the signal might be transmitted.

(14) "Subscriber" means any user who employs the services of a central alarm station.

(15) "User" means any person owning and operating an alarm system, regardless of whether the alarm system was purchased or obtained within the boundaries of the District of Columbia.

(Sept. 26, 1980, D.C. Law 3-107, § 3, 27 DCR 3760; Mar. 29, 1988, D.C. Law 7-99, § 2(d), 35 DCR 1051.)

Prior Codifications. — 1981 Ed., § 6-3102.
Legislative history of Law 3-107. — For legislative history of D.C. Law 3-107, see Historical and Statutory Notes following § 7-2801.
Legislative history of Law 7-99. — For legislative history of D.C. Law 7-99, see Historical and Statutory Notes following § 7-2801.

§ 7-2803. Prohibition of prerecorded transmittals.

Except for signaling devices jointly approved by the District of Columbia Fire Department and the Office on Aging under the Life Safety System, no person shall transmit or cause to be transmitted a prerecorded message to report any fire, burglary, holdup, or other emergency directly to the Metropolitan Police Department or the District of Columbia Fire Department by means of any telephone device, telephone attachment, alarm system, or other device. Any person violating this section shall be subject to a fine of up to \$100 for each offense.

(Sept. 26, 1980, D.C. Law 3-107, § 4, 27 DCR 3760; Mar. 29, 1988, D.C. Law 7-99, § 2(e), 35 DCR 1051.)

Prior Codifications. — 1981 Ed., § 6-3103.
Legislative history of Law 3-107. — For legislative history of D.C. Law 3-107, see Historical and Statutory Notes following § 7-2801.
Legislative history of Law 7-99. — For legislative history of D.C. Law 7-99, see Historical and Statutory Notes following § 7-2801.

§ 7-2804. Licensing of alarm dealers.

(a) No person shall engage in the business of an alarm dealer within the boundaries of the District of Columbia without first obtaining from the Mayor a license to be known as an alarm dealer's license. Such license shall be required in addition to any other license or registration required by law. Any person who engages in the business of an alarm dealer within the boundaries of the District of Columbia without having obtained such a license shall be subject to a fine of up to \$300 for each such violation.

(b) Application for an alarm dealer's license shall be made to the Mayor on a form prescribed by the Mayor. The information provided by each applicant shall be under oath and shall include, but shall not be limited to, the following:

- (1) The name, address, and telephone number of the applicant;
- (2) The name, address, and telephone number of the alarm business, the type of business organization, and the names and addresses of the president, vice-president, secretary, treasurer, manager, or other principal officer responsible for the operation of the business or local branch of the business, as applicable;

(3) That if the applicant plans to install, inspect, maintain, repair or service any alarm system, such applicant must comply with the provisions of § 7-2806(d).

(c) Each person whose name is required to be listed on the application shall furnish the Mayor with sets of his or her fingerprints, which shall become part of the application and shall be compared and recorded by the Chief of Police. The Chief of Police shall submit such fingerprints to the Federal Bureau of Investigation and to such other authorities as the Chief of Police may deem advisable for comparison and record checking, and shall make such other investigation as the Chief of Police determines to be relevant. The Chief of Police shall cause such fingerprints to be returned to the Metropolitan Police Department upon completion and record checking by other agencies. The Chief of Police shall report the results of the investigation to the Mayor, who shall determine whether a license shall be issued.

(d) Each application required by this section shall be accompanied by a nonrefundable fee to be established by the Mayor; provided, that such fee shall, in the judgment of the Mayor, reimburse the District for the cost of services provided under this section. The term of the license shall be determined by the Mayor.

(e) An alarm dealer's license may be denied, suspended, or revoked upon any 1 or more of the following grounds:

(1) That the applicant made a false statement of a material fact in the application;

(2) That the applicant or licensee has violated any provision of this chapter, or any other applicable act or regulation governing such licenses; or

(3) That the applicant or licensee or other person specified in subsection (b) of this section has been convicted of a felony within the last 10 years, or of a misdemeanor involving unlawful entry or the unlawful taking of the property of another within the last 5 years, unless the Mayor determines that the issuance or continuance of a license would not constitute a significant risk to the community. The Mayor shall consider the following factors in determining whether a significant risk exists:

(A) The nature of the crime and its relationship to the duties and circumstances of participation in the business;

(B) information pertaining to the degree of rehabilitation of the convicted person; and

(C) the time elapsed since conviction.

(f) The Mayor may refuse to license, or may suspend or revoke any license in accordance with the provisions of this chapter, by notifying the applicant or licensee in writing and setting forth reasons authorized by subsection (e) of this section for such suspension or revocation. The Mayor may order a suspension for a period not to exceed 6 months. Any person whose license has been revoked may not apply for reissuance until 6 months after the date of revocation. Reissuance shall be subject to payment of the same fee required for obtaining an original license.

(g) Whenever the Mayor proposes to deny, suspend, or revoke a license, he shall serve upon the applicant or licensee written notice which shall:

- (1) State the nature of the proposed action;
- (2) Set forth facts which constitute the basis for the proposed action;
- (3) Advise the applicant or licensee that he has the opportunity to submit information, within 10 days of service of the notice of proposed action, bearing on such proposed action for consideration by the Mayor;

(4) Advise the applicant or licensee that unless information is submitted pursuant to this section, the notice of proposed action shall constitute the notice of final action 10 days after service of such notice.

(h) In conjunction with the authority granted by this section, the Mayor shall have the authority to enter into agreements of assurance of compliance or discontinuance prior, or as an alternative, to denial, suspension, or revocation of license.

(i) Prior to any final action by the Mayor to suspend or revoke a license pursuant to this section, the license shall remain effective until its normal expiration date.

(j) Any person who has been served with a notice of final action may file a request for a hearing with the Office of Administrative Hearings. Any such hearing shall be held in accordance with of Chapter 5 of Title 2.

(Sept. 26, 1980, D.C. Law 3-107, § 5, 27 DCR 3760; Mar. 29, 1988, D.C. Law 7-99, § 2(f), 35 DCR 1051; Apr. 13, 2005, D.C. Law 15-354, § 17, 52 DCR 2638.)

Cross references. — Alarm agents licenses, denial suspension, or revocation, see § 7-2805.

Prior Codifications. — 1981 Ed., § 6-3104.

Effect of amendments. — D.C. Law 15-354 rewrote subsec. (j) which had read:

“(j) Any person upon whom a notice of final action has been served may file with the Board of Appeals and Review, established by Organization Order No. 112, dated August 11, 1955, a written demand for a hearing. Any such hearing shall be held in accordance with the provi-

sions of Chapter 5 of Title 2 and the Rules of Procedure of the Board of Appeals and Review adopted May 17, 1974.”

Legislative history of Law 3-107. — For legislative history of D.C. Law 3-107, see Historical and Statutory Notes following § 7-2801.

Legislative history of Law 7-99. — For legislative history of D.C. Law 7-99, see Historical and Statutory Notes following § 7-2801.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 7-1811.01.

§ 7-2805. Licensing of alarm agents.

(a) No person shall act as an alarm agent within the boundaries of the District of Columbia without first obtaining a license to be known as an alarm agent's license. A person to whom an alarm dealer's license has been issued may obtain an alarm agent's license without payment of any additional license fee. Any person who violates this section shall pay a fine of not more than \$300. Alarm agents' licenses shall be issued in the form of an identification card.

(b) Application for an alarm agent's license shall be made to the Mayor on a form prescribed by the Mayor. The information provided by the applicant shall be under oath and shall include, but shall not be limited to the following:

- (1) The name, address, and telephone number of the applicant;
- (2) The name, address, and telephone number of the alarm business by whom the applicant will be employed; and

(3) A signed statement by the owner or manager of the particular alarm business indicating that employment has been offered to the applicant.

(c) Each applicant for an alarm agent's license shall furnish the Mayor with

sets of his or her fingerprints, which shall be processed in the manner set forth in § 7-2804(c).

(d) Each application required by this section shall be accompanied by a nonrefundable fee to be established by the Mayor; Provided, that such fee shall, in the judgment of the Mayor, reimburse the District for the cost of services provided under this section. The term of the license shall be determined by the Mayor.

(e) Each alarm agent, and each alarm dealer whose duties include the installation, inspection, maintenance, servicing, or repair of alarm systems, shall carry on his or her person at all times while engaged in such duties a valid licensee identification card. Such identification card shall include the name of the alarm agent, a photograph of the alarm agent, and an identification number. Such card shall be displayed upon request. Identification cards are not transferable, and must be surrendered to the Mayor upon termination of employment as an alarm agent or suspension or revocation of an alarm agent's license.

(f) Alarm agents' licenses shall be subject to denial, suspension, or revocation on the grounds set forth in § 7-2804(e). Procedures for the denial, suspension, or revocation of such a license shall be as set forth in § 7-2804(f), (g), (i), and (j).

(g) Any license issued pursuant to this section shall be issued as an Inspected Sales and Services endorsement to a basic business license under the basic business license system as set forth in subchapter I-A of Chapter 28 of Title 47.

(Sept. 26, 1980, D.C. Law 3-107, § 6, 27 DCR 3760; Mar. 29, 1988, D.C. Law 7-99, § 2(g), 35 DCR 1051; Apr. 20, 1999, D.C. Law 12-261, § 2003(l), 46 DCR 3142; Oct. 28, 2003, D.C. Law 15-38, § 3(j), 50 DCR 6913.)

Cross references. — Regulated non-health related occupations and professions, see § 47-2853.04.

Prior Codifications. — 1981 Ed., § 6-3105.

Effect of amendments. — D.C. Law 15-38, in subsec. (g), substituted “an Inspected Sales and Services endorsement to a basic business license under the basic” for “a Class A Inspected Sales and Services endorsement to master business license under the master”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 3(j) of Streamlining Regulation Emergency Act of 2003 (D.C. Act 15-145, August 11, 2003, 50 DCR 6896).

Legislative history of Law 3-107. — For legislative history of D.C. Law 3-107, see Historical and Statutory Notes following § 7-2801.

Legislative history of Law 7-99. — For legislative history of D.C. Law 7-99, see Historical and Statutory Notes following § 7-2801.

Legislative history of Law 12-261. — Law 12-261, the “Second Omnibus Regulatory Reform Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-615, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615 and transmitted to both Houses of Congress for its review. D.C. Law 12-261 became effective on April 20, 1999.

Legislative history of Law 15-38. — For Law 15-38, see notes following § 7-732.

§ 7-2806. Duties of alarm dealers.

(a) Alarm dealers shall maintain in a secure and confidential manner records of all sales, leases, rentals, or installations of alarm systems and of service calls for alarm systems. Such records shall include the name of the

alarm user, the address of the premises at which the alarm system is located, the date of installation or service call, and such other information as the Mayor may require. Such records shall be maintained for a period of no less than 1 year, unless specific records are required to be maintained for a longer period by the Mayor.

(b)(1) Alarm dealers shall provide to users complete oral and written instructions and demonstrations in the proper care and use of any alarm or alarm system sold to or installed for a user.

(2) Warranties provided by alarm dealers to users shall be in writing. Alarm dealers shall also provide users with copies of written warranties by the manufacturer which are enforceable by the user.

(3) Alarm dealers shall inform alarm users that the use of alarms within the boundaries of the District of Columbia is governed by law.

(4) Upon the sale or installation of an alarm system, alarm dealers shall obtain from the alarm user a written acknowledgment that the requirements set forth in this subsection have been met. Such acknowledgment shall be signed by the user and maintained as part of the records required to be kept by subsection (a) of this section.

(c) Alarm dealers who contract with a user to respond to the scene of an alarm activation shall post on the premises, in a conspicuous place visible from outside the premises, a sticker or other sign indicating the name and telephone number of the alarm dealer. When an alarm system has been activated the alarm dealer shall have an alarm agent present at the premises within 1 hour after being requested to do so by the Metropolitan Police Department or District of Columbia Fire Department, unless good cause is shown.

(d) Alarm dealers have an affirmative duty to adequately train and supervise alarm agents in their employ. Any alarm dealer which installs, inspects, maintains, repairs or services any alarm system must employ or otherwise engage the services of at least 1 person who possesses, at a minimum, a current master electrician limited license which is valid in the District.

(Sept. 26, 1980, D.C. Law 3-107, § 7, 27 DCR 3760; Mar. 29, 1988, D.C. Law 7-99, § 2(h), 35 DCR 1051.)

Section references. — This section is referred to in § 7-2804.

Prior Codifications. — 1981 Ed., § 6-3106.

Legislative history of Law 3-107. — For legislative history of D.C. Law 3-107, see Historical and Statutory Notes following § 7-2801.

Legislative history of Law 7-99. — For legislative history of D.C. Law 7-99, see Historical and Statutory Notes following § 7-2801.

§ 7-2807. Duties of security alarm users.

(a) An alarm system user shall not cause or permit any false alarm.

(b) It shall be the responsibility of alarm users to instruct any employees or others who may have occasion to activate an alarm that alarm systems are to be activated only in emergency situations to summon an immediate police or fire department response. Alarm users shall also instruct appropriate employees as to the operation of the alarm system, to include setting, activation, and resetting of the alarm.

(c) Alarm users shall be responsible for seeing that alarm systems are maintained in good working order and that defects which could cause false alarms are promptly repaired.

(d) Users of alarm systems who have not contracted with an alarm dealer for an alarm agent to respond to the scene of alarm activations shall indicate the telephone numbers of at least 2 responsible persons who are capable of deactivating and resetting the alarm system and of assisting the police or fire department to secure the premises, if necessary, and who may be notified by the Metropolitan Police Department or District of Columbia Fire Department to respond to the scene by either: (1) posting the names of such persons on a sticker or other sign on the premises in a conspicuous place visible from outside the premises; or (2) filing the names with the Mayor as defined by regulation. Such person or persons shall respond to the scene within one-half hour after being requested to do so by the Metropolitan Police Department or District of Columbia Fire Department, unless good cause is shown.

(Sept. 26, 1980, D.C. Law 3-107, § 8, 27 DCR 3760; Mar. 29, 1988, D.C. Law 7-99, § 2(i), 35 DCR 1051.)

Prior Codifications. — 1981 Ed., § 6-3107.

Legislative history of Law 3-107. — For legislative history of D.C. Law 3-107, see Historical and Statutory Notes following § 7-2801.

Legislative history of Law 7-99. — For legislative history of D.C. Law 7-99, see Historical and Statutory Notes following § 7-2801.

§ 7-2808. Standards for security and fire alarm systems.

(a) No person shall install or maintain an audible alarm system which creates a sound capable of being mistakenly identified as that of an emergency vehicle siren or a civil defense warning siren.

(b) The Mayor is authorized to deactivate any exterior audible alarm system which continues to emit a sound for more than one-half hour.

(c) No person shall install or maintain an alarm system which does not have some safeguard which allows reasonable delay to halt or recall an accidental alarm activation before the alarm is communicated to the Metropolitan Police Department or District of Columbia Fire Department for response to the scene.

(Sept. 26, 1980, D.C. Law 3-107, § 9, 27 DCR 3760; Mar. 29, 1988, D.C. Law 7-99, § 2(j), 35 DCR 1051.)

Prior Codifications. — 1981 Ed., § 6-3108.

Legislative history of Law 3-107. — For legislative history of D.C. Law 3-107, see Historical and Statutory Notes following § 7-2801.

Legislative history of Law 7-99. — For legislative history of D.C. Law 7-99, see Historical and Statutory Notes following § 7-2801.

§ 7-2809. Exceptions.

(a) This chapter shall not apply to the use of alarm systems by law-enforcement personnel for law-enforcement purposes.

(b) This chapter shall not apply to alarm systems installed in motor vehicles, boats, or aircraft.

(c) This chapter shall not apply to alarm systems which do not communicate

directly or indirectly with the Metropolitan Police Department or District of Columbia Fire Department to request a police or fire department response, but which are designed solely to alert personnel or others directly connected with or employed by the owner or operator of the protected premises or an agency who are required to respond to the scene of the activation prior to initiating a call for police or fire department services.

(d) This chapter shall not apply to persons engaged solely in the manufacture or sale of alarm systems or components thereof from a fixed location.

(e) This chapter shall not apply to telephone answering services which receive alarm activation signals and relay information to the Metropolitan Police Department or District of Columbia Fire Department, but do not function in any other manner as an agency or alarm dealer.

(f) This chapter shall not apply to electricians who may have occasion to deal with electrical components of alarm systems, but who are not alarm dealers or alarm agents, or acting in any such capacity.

(g) This chapter shall not apply to any alarm system used, operated, or installed in any premises or place owned, leased, occupied, or under the control of the governments of the United States or the District of Columbia, nor to any officer, agent, or employee of either government while acting or employed in his official capacity.

(Sept. 26, 1980, D.C. Law 3-107, § 10, 27 DCR 3760; Mar. 29, 1988, D.C. Law 7-99, § 2(k), 35 DCR 1051.)

Prior Codifications. — 1981 Ed., § 6-3109.

Legislative history of Law 3-107. — For legislative history of D.C. Law 3-107, see Historical and Statutory Notes following § 7-2801.

Legislative history of Law 7-99. — For legislative history of D.C. Law 7-99, see Historical and Statutory Notes following § 7-2801.

§ 7-2810. Inspections.

The Mayor is authorized to inspect the facilities of any alarm dealer, central alarm station, or commercial user or subscriber during reasonable business hours to determine whether the requirements of this chapter are being met. Information obtained pursuant to such inspections shall be kept confidential and used only in conjunction with the enforcement of this chapter or for other authorized purposes.

(Sept. 26, 1980, D.C. Law 3-107, § 11, 27 DCR 3760; Mar. 29, 1988, D.C. Law 7-99, § 2(l), 35 DCR 1051.)

Prior Codifications. — 1981 Ed., § 6-3110.

Legislative history of Law 3-107. — For legislative history of D.C. Law 3-107, see Historical and Statutory Notes following § 7-2801.

Legislative history of Law 7-99. — For legislative history of D.C. Law 7-99, see Historical and Statutory Notes following § 7-2801.

§ 7-2811. Penalties generally.

(a) Unless otherwise specified, any person who violates a provision of this chapter shall be fined no less than \$40 nor more than \$100.

(b) All fines levied pursuant to this chapter are civil in nature.

(c) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this chapter, or any rules or regulations issued under the authority of this chapter, pursuant to Chapter 18 of Title 2. Adjudication of any infraction of this chapter shall be pursuant to Chapter 18 of Title 2.

(Sept. 26, 1980, D.C. Law 3-107, § 12, 27 DCR 3760; Mar. 29, 1988, D.C. Law 7-99, § 2(m), 35 DCR 1051; Mar. 8, 1991, D.C. Law 8-237, § 18, 38 DCR 314.)

Prior Codifications. — 1981 Ed., § 6-3111.

Legislative history of Law 3-107. — For legislative history of D.C. Law 3-107, see Historical and Statutory Notes following § 7-2801.

Legislative history of Law 7-99. — For legislative history of D.C. Law 7-99, see Historical and Statutory Notes following § 7-2801.

Legislative history of Law 8-237. — Law 8-237, the "Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985

Technical and Clarifying Amendments Act of 1990," was introduced in Council and assigned Bill No. 8-203, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 4, 1990, and December 18, 1990, respectively. Signed by the Mayor on December 27, 1990, it was assigned Act No. 8-320 and transmitted to both Houses of Congress for its review.

§ 7-2812. Notice of violation.

(a) The Mayor may issue a notice of violation to any person who violates a provision of this chapter.

(b) A notice of violation shall:

(1) State the nature of the violation; and

(2) Describe the procedures provided in this section and § 7-2813.

(c) A notice of violation shall be the summons and complaint for purposes of this chapter. A duplicate of the notice of violation shall be served personally on the person to whom it is issued as provided in subsection (d) of this section. The original or a facsimile thereof shall be filed with the Office of the Corporation Counsel and shall be deemed a record kept in the ordinary course of business and shall be prima facie evidence of the facts contained therein.

(d) A notice of violation shall be served personally upon the alleged violator. If the alleged violator is not present the notice of violation shall be served by affixing such notice to the place of business (in the case of an alarm dealer or agent) or to the scene (in the case of an alarm user) in a conspicuous place.

(e) A person shall answer a notice of violation within 15 days by:

(1) Depositing and forfeiting collateral in an amount established by rule or order of the Mayor; or

(2) Depositing collateral in an amount established by rule or order of the Mayor and requesting the Superior Court of the District of Columbia to set a trial date.

(f) The Mayor shall prescribe the form for the notice of violation. A Mayor's rule or order establishing the amount of collateral shall become effective at expiration of 30 days unless the Council of the District of Columbia shall, during such period, adopt a resolution disapproving such Mayor's rule or order.

(Sept. 26, 1980, D.C. Law 3-107, § 13, 27 DCR 3760; Mar. 29, 1988, D.C. Law 7-99, § 2(n), 35 DCR 1051; May 10, 1989, D.C. Law 7-231, § 22, 36 DCR 492.)

Section references. — This section is referred to in § 7-2813 to 7-2815.

Prior Codifications. — 1981 Ed., § 6-3112.

Legislative history of Law 3-107. — For legislative history of D.C. Law 3-107, see Historical and Statutory Notes following § 7-2801.

Legislative history of Law 7-99. — For legislative history of D.C. Law 7-99, see Historical and Statutory Notes following § 7-2801.

Legislative history of Law 7-231. — Law

7-231, the “Technical Amendments Act of 1988,” was introduced in Council and assigned Bill No. 7-586, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 29, 1988 and December 13, 1988, respectively. Signed by the Mayor on January 6, 1989, it was assigned Act No. 7-285 and transmitted to both Houses of Congress for its review.

§ 7-2813. Trial.

(a) Unless otherwise provided, the conduct of any civil trial commenced pursuant to § 7-2812 shall be governed by the Rules of the Superior Court of the District of Columbia.

(b) In such trial, the complaint of a violation of this chapter shall be brought in the name of the District of Columbia by the Corporation Counsel. The burden of proof shall be upon the District of Columbia and no violation of this chapter may be established except upon proof by a preponderance of the evidence.

(Sept. 26, 1980, D.C. Law 3-107, § 14, 27 DCR 3760.)

Section references. — This section is referred to in § 7-2812.

Prior Codifications. — 1981 Ed., § 6-3113.

Legislative history of Law 3-107. — For legislative history of D.C. Law 3-107, see Historical and Statutory Notes following § 7-2801.

§ 7-2814. Collection of fines and fees.

(a) All fines, collateral and fees collected pursuant to this chapter shall be paid into the General Fund of the District of Columbia.

(b) A fine or collateral is due and payable under this chapter upon default or a finding at trial in favor of the District or upon the failure of a person to answer a notice of violation within 15 days as provided in § 7-2812(e).

(c) Failure of a person to pay a fine or collateral when due shall cause such fine or collateral to be due and payable in twice the original amount not to exceed \$300.

(d) The District of Columbia shall have a lien upon any amount due and payable as a fine or collateral pursuant to this chapter. However, no such lien shall be effective unless: (1) the District shall have filed in the Office of the Recorder of Deeds of the District of Columbia, in a docket provided for such liens, a written statement containing the name and address of the violator and the date and approximate place of the violation; and (2) the District shall have given notice of the filing of such lien to the violator. Thereafter, the District is authorized to file suit in the amount of its lien.

(Sept. 26, 1980, D.C. Law 3-107, § 15, 27 DCR 3760.)

Prior Codifications. — 1981 Ed., § 6-3114.

Legislative history of Law 3-107. — For

legislative history of D.C. Law 3-107, see Historical and Statutory Notes following § 7-2801.

§ 7-2815. Miscellaneous provisions.

(a) In accordance with Chapter 5 of Title 2, the Mayor shall issue such rules and procedures as are necessary to implement this chapter. Except as provided by the Mayor, the Metropolitan Police Department and District of Columbia Fire Department shall be responsible for the enforcement of this chapter and the issuance of any notice of violation pursuant to § 7-2812.

(b) If any portion of this chapter is for any reason held invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining provisions.

(Sept. 26, 1980, D.C. Law 3-107, § 16, 27 DCR 3760; Mar. 29, 1988, D.C. Law 7-99, § 2(o), 35 DCR 1051.)

Prior Codifications. — 1981 Ed., § 6-3115.

Legislative history of Law 3-107. — For legislative history of D.C. Law 3-107, see Historical and Statutory Notes following § 7-2801.

Legislative history of Law 7-99. — For legislative history of D.C. Law 7-99, see Historical and Statutory Notes following § 7-2801.

CHAPTER 28A. SAFE NEEDLE DISTRIBUTION.

Sec.

7-2851. Definitions.

7-2852. Prohibition.

7-2853. Reporting.

7-2854. Penalties.

Sec.

7-2855. Rules.

7-2856. [Repealed].

7-2857. Nonseverability.

7-2858. Applicability.

§ 7-2851. Definitions.

For the purposes of this chapter, the term:

(1) "Department of Health" means the District of Columbia Department of Health.

(2) "Engineered sharps injury protection" means a physical attribute built into a sharp that effectively reduces the risk of an exposure incident by a mechanism such as a barrier creation, blunting, encapsulation, withdrawal, retraction, destruction, or other effective mechanisms.

(3) "Exposure incident" means contact with blood or other potentially infectious materials that results from a sharp injury.

(4) "Person" means any individual, corporation, or other such entity that sells, distributes, uses, or possesses sharps.

(5) "Sharp" means any medical device that is or contains a needle.

(6) "Sharps injury" means any injury caused by a sharp, including cuts, abrasions, or needlesticks.

(Apr. 4, 2001, D.C. Law 13-272, § 2, 48 DCR 1633.)

Legislative history of Law 13-272. — Law 13-272, the "Safe Needle Act of 2000", was introduced in Council and assigned Bill No. 13-266, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on December 5, 2000,

and December 19, 2000, respectively. Signed by the Mayor on January 16, 2001, it was assigned Act No. 13-565 and transmitted to both Houses of Congress for its review. D.C. Law 13-272 became effective on April 4, 2001.

§ 7-2852. Prohibition.

(a) No sharp shall be sold, distributed, used, or possessed within the District of Columbia ("District") unless its premarket notification for medical devices with engineered sharps injury protections has been approved by the United States Food and Drug Administration, pursuant to section 510(k) of the Federal Food, Drug, and Cosmetic Act, approved October 10, 1962 (76 Stat. 794; 21 U.S.C. § 360(k)).

(b) The Director of the Department of Health ("Director") may provide a waiver of the prohibition in subsection (a) of this section to any person that can establish through objective data that:

(1) The use of sharps without engineered sharps injury protections is essential to the performance of a specific medical procedure;

(2) Sharps with engineered sharps injury protections are not presently available for use in that medical procedure; and

(3) In the case of a manufacturer, the manufacturer is currently developing, and will continue to develop:

(A) Sharps with engineered injury protections; or

(B) Medical devices that do not incorporate a needle into their design that are suitable for the specific medical procedure.

(c) For a period of one year following the implementation of the prohibition pursuant to subsection (a) of this section and § 7-2858, a waiver of the prohibition shall be granted to all persons for use of syringes that are pre-filled with medications by a pharmaceutical company.

(d) This chapter shall not apply to the sale, distribution, use, or possession of sharps used in the practice of dentistry or in the self-administration of drugs, medicines, or other treatments.

(Apr. 4, 2001, D.C. Law 13-272, § 3, 48 DCR 1633.)

Legislative history of Law 13-272. — For D.C. Law 13-272, see notes following § 7-2851.

§ 7-2853. Reporting.

Any person involved in an exposure incident within the District shall report the incident to the Director within 90 days of its occurrence. The report shall include the date and time of the exposure, the type and brand of sharp involved in the exposure incident, and a description of the exposure incident. The Director shall compile an annual report of all exposure incidents within the District and make the report available to the public upon request.

(Apr. 4, 2001, D.C. Law 13-272, § 4, 48 DCR 1633.)

Legislative history of Law 13-272. — For D.C. Law 13-272, see notes following § 7-2851.

§ 7-2854. Penalties.

(a) Any person who violates the provisions of this chapter shall be subject to a civil penalty not to exceed \$1,000. The Corporation Counsel of the District of Columbia may bring an action to restrain violations of the provisions of this chapter.

(b) Any person who willfully and intentionally violates the provisions of this chapter shall be guilty of a misdemeanor and, upon conviction, shall be subject to the following:

(1) On a first offense, a fine of not more than \$5,000 or imprisonment for not more than 30 days, or both; and

(2) On a second or subsequent offense, a fine of not more than \$10,000 or imprisonment for not more than 90 days, or both.

(Apr. 4, 2001, D.C. Law 13-272, § 5, 48 DCR 1633.)

Legislative history of Law 13-272. — For D.C. Law 13-272, see notes following § 7-2851.

§ 7-2855. Rules.

The Director, pursuant to subchapter I of Chapter 5 of Title 2, shall issue rules to implement the provisions of this chapter.

(Apr. 4, 2001, D.C. Law 13-272, § 6, 48 DCR 1633.)

Legislative history of Law 13-272. — For D.C. Law 13-272, see notes following § 7-2851.

§ 7-2856. Appropriations. [Repealed].

Repealed.

(Apr. 4, 2001, D.C. Law 13-272, § 7, 48 DCR 1633; Aug. 16, 2008, D.C. Law 17-219, § 7026, 55 DCR 7598.)

Legislative history of Law 13-272. — For D.C. Law 13-272, see notes following § 7-2851.

Legislative history of Law 17-219. — For Law 17-219, see notes following § 7-651.17.

§ 7-2857. Nonseverability.

If any provision of this chapter or its application to any person or circumstances is held to be unconstitutional, beyond the statutory authority of the Council of the District of Columbia, or otherwise invalid, then all provisions of this chapter shall be deemed invalid.

(Apr. 4, 2001, D.C. Law 13-272, § 8, 48 DCR 1633.)

Legislative history of Law 13-272. — For D.C. Law 13-272, see notes following § 7-2851.

§ 7-2858. Applicability.

This chapter shall apply 12 months after April 4, 2001.

(Apr. 4, 2001, D.C. Law 13-272, § 9, 48 DCR 1633.)

Legislative history of Law 13-272. — For D.C. Law 13-272, see notes following § 7-2851.

CHAPTER 28B. YOUTH ATHLETIC CONCUSSION PROTECTION.

Sec.

7-2871.01. Definitions.

7-2871.02. Concussion protection.

7-2871.03. Training program.

Sec.

7-2871.04. Materials development and distribution.

7-2871.05. Rules.

§ 7-2871.01. Definitions.

For the purposes of this chapter, the term:

(1) “Athlete” means a person who engages in athletic activity who is 18 years old or younger.

(2) “Athletic activity” means a program or event, including practice and competition, organized as part of a school-sponsored, interscholastic-athletic program, an athletic program sponsored by the Department of Parks and Recreation, or an athletic program under the auspices of a nonprofit or for-profit organization. The term “athletic activity” includes participation in physical education classes that are part of a school curriculum.

(3) “Concussion” means a traumatic injury to the brain causing a change in a person’s mental status at the time of the injury, such as feeling dazed, disoriented, or confused, which may or may not involve a loss of consciousness, resulting from:

(A) A fall;

(B) A blow or jolt to the head or body;

(C) The shaking or spinning of the head or body; or

(D) The acceleration and deceleration of the head.

(4) “School” means a public school operated under the authority of the Mayor and any charter, parochial, or private school in the District.

(Oct. 20, 2011, D.C. Law 19-22, § 2, 58 DCR 6506.)

Legislative history of Law 19-22. — Law 19-22, the “Athletic Concussion Protection Act of 2011”, was introduced in Council and assigned Bill No. 19-7, which was referred to the Committee on Health. The Bill was adopted on first and second readings on June 7, 2011, and

July 12, 2011, respectively. Signed by the Mayor on July 27, 2011, it was assigned Act No. 19-99 and transmitted to both Houses of Congress for its review. D.C. Law 19-22 became effective on October 20, 2011.

§ 7-2871.02. Concussion protection.

(a) An athlete who is suspected of sustaining a concussion in an athletic activity shall be immediately removed from physical participation in the athletic activity.

(b) An athlete who has been removed from an athletic activity may not return to physical participation in the athletic activity until he or she has been evaluated by a licensed or certified health-care provider and receives written clearance to return to physical participation in the athletic activity from the evaluating health-care provider.

(Oct. 20, 2011, D.C. Law 19-22, § 3, 58 DCR 6506.)

Legislative history of Law 19-22. — For history of Law 19-22, see notes under § 7-2871.01.

§ 7-2871.03. Training program.

- (a) The Mayor shall establish, through rulemaking, a training program on:
 - (1) The nature and risk of a concussion;
 - (2) The criteria for the removal of an athlete from physical participation in an athletic activity and his or her return to it; and
 - (3) The risks to an athlete of not reporting an injury and continuing to physically participate in the athletic activity.
- (b) The Mayor shall determine, through rulemaking, which individuals shall be required to complete the training program.
- (c) In addition to those individuals required to complete the training program, the Department of Health may make the program available to any interested individual, including school personnel, parents, students, and athletes.

(Oct. 20, 2011, D.C. Law 19-22, § 4, 58 DCR 6506.)

Legislative history of Law 19-22. — For history of Law 19-22, see notes under § 7-2871.01.

§ 7-2871.04. Materials development and distribution.

- (a) The Department of Health shall create educational materials on the nature and risk of concussions.
- (b) Before an athlete may participate in an athletic activity, the organizing entity shall provide the educational materials developed pursuant to subsection (a) of this section to the athlete and the parent or guardian of the athlete. The athlete and the parent or guardian of the athlete shall sign a statement acknowledging receipt of the materials and return it to the organizing entity before the athlete shall be allowed to participate in the athletic activity.

(Oct. 20, 2011, D.C. Law 19-22, § 5, 58 DCR 6506.)

Legislative history of Law 19-22. — For history of Law 19-22, see notes under § 7-2871.01.

§ 7-2871.05. Rules.

- (a)(1) Within 120 days of October 20, 2011, the Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], shall issue rules to implement the provisions of this chapter.
- (b) The Mayor, through rulemaking, may expand the authority of this chapter to include athletic activities that are non-interscholastic school-sponsored or organized by a non-governmental organization.

(Oct. 20, 2011, D.C. Law 19-22, § 6, 58 DCR 6506.)

Legislative history of Law 19-22. — For history of Law 19-22, see notes under § 7-2871.01.

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SUBTITLE K. HEALTH CARE SYSTEM DEVELOPMENT COMMISSION.

CHAPTER 29. HEALTH CARE SYSTEM DEVELOPMENT COMMISSION.

| | |
|--|--------------------------------------|
| Sec. | Sec. |
| 7-2901. Establishment; purpose. | 7-2904. Duties. |
| 7-2902. Qualifications; membership; terms of office. | 7-2905. Approval of recommendations. |
| 7-2903. Compensation. | 7-2906. Office space and staffing. |

§ 7-2901. Establishment; purpose.

There is established a Health Care System Development Commission ("Commission") to develop recommendations and an implementation plan for developing the health care system.

(Oct. 20, 1999, D.C. Law 13-38, § 1302, 46 DCR 6373.)

Emergency legislation. — For temporary (90-day) addition of §§ 7-2901 to 7-2906, see §§ 1302 to 1307 of the Service Improvement and Fiscal Year 2000 Budget Support Emergency Act of 1999 (D.C. Act 13-110, July 28, 1999, 46 DCR 6320).

Legislative history of Law 13-38. — Law 13-38, the "Service Improvement and Fiscal Year 2000 Budget Support Act of 1999," was introduced in Council and assigned Bill No. 13-161, which was referred to the Committee of

the Whole. The Bill was adopted on first and second readings on May 11, 1999, and June 22, 1999, respectively. Signed by the Mayor on July 8, 1999, it was assigned Act No. 13-111 and transmitted to both Houses of Congress for its review. D.C. Law 13-38 became effective on October 20, 1999.

Short title. — Section 1301 of D.C. Law 13-38 provided: "This title may be cited as the 'Health Care System Development Commission Establishment Act of 1999.'"

§ 7-2902. Qualifications; membership; terms of office.

(a) The Commission shall consist of 11 members as follows:

(1) There shall be 3 ex-officio voting members as follows:

(A) The Mayor of the District of Columbia ("Mayor");

(B) The Chairman of the Council of the District of Columbia ("Council");

and

(C) The Chairman of the Council's Committee on Human Services.

(2) There shall be 5 members appointed by the Mayor and 3 members appointed by the Council by resolution.

(A) Appointed members of the Commission shall be persons with proven expertise in health care delivery, finance, insurance, public health, integrated health care delivery systems, or strategic planning.

(B) Appointed members of the Commission shall be residents of the District.

(b) A vacancy on the Commission shall be filled in the same manner that the original appointment was made.

(c) The Commission shall select a chair from among its ex-officio members.

(d) Six members of the Commission shall constitute a quorum.

(e) The term of members shall end 180 days after October 20, 1999.

(Oct. 20, 1999, D.C. Law 13-38, § 1303, 46 DCR 6373.)

Legislative history of Law 13-38. — For Law 13-38, see notes following § 7-2901.

§ 7-2903. Compensation.

Members of the Commission shall not receive compensation or reimbursement for actual expenses incurred in the performance of official duties.

(Oct. 20, 1999, D.C. Law 13-38, § 1304, 46 DCR 6373.)

Legislative history of Law 13-38. — For Law 13-38, see notes following § 7-2901.

§ 7-2904. Duties.

(a) The Commission shall establish criteria to be used in the development of recommendations. The criteria shall include, but not be limited to, the following:

- (1) Efficiency and effectiveness of the District's health care system;
- (2) Access to quality health care services;
- (3) Consistency with financial plan and budget of the District;
- (4) Community impact; and
- (5) Economic benefits.

(b) Within 120 days after its initial meeting, the Commission shall develop a set of recommendations for developing the health care system which addresses the following:

- (1) Inpatient bed over-capacity;
- (2) Distribution of health care services and providers;
- (3) The role and the needs of the District of Columbia Public Benefit Corporation;
- (4) Maintenance of safety net providers;
- (5) Impediments to accessing care beyond the lack of health care insurance;
- (6) Fiscal impact of expanding health insurance coverage, including a study of the utilization of available health maintenance organization coverage by the Medicaid eligible population for each year since the advent of Medicaid HMO coverage in the District of Columbia, and the number of medically indigent District residents who have been provided care at area hospitals as compared to the total number of medically indigent persons who have received care in each hospital in each of the past 3 years;
- (7) Implementation schedule for developing the health care system; and
- (8) Other issues.

(c) The recommendations shall be developed in accordance with the criteria established in this section.

(Oct. 20, 1999, D.C. Law 13-38, § 1305, 46 DCR 6373.)

Legislative history of Law 13-38. — For Law 13-38, see notes following § 7-2901.

§ 7-2905. Approval of recommendations.

(a) The Mayor shall transmit the recommendations of the Commission to the Council for approval.

(b) The recommendations shall be transmitted to the Council for a 45-day period, excluding days of Council recess. The Council shall take action to approve or disapprove the recommendations. If the Council does not take action within the 45-day period, the recommendations shall be deemed disapproved.

(Oct. 20, 1999, D.C. Law 13-38, § 1306, 46 DCR 6373.)

Legislative history of Law 13-38. — For Law 13-38, see notes following § 7-2901.

Resolutions. — Resolution 13-594, the “Health Care System Development Commission Recommendations Emergency Approval Resolution of 2000”, was approved effective June 26, 2000.

§ 7-2906. Office space and staffing.

(a) The Mayor shall provide sufficient office space, detail staff, and technical and administrative support to assist the Commission in the fulfillment of its duties.

(b) The Commission shall have the authority to request directly from each department, agency, or instrumentality of the District government, and each department, agency, or instrumentality is hereby authorized to furnish directly to the Commission upon its request, any information deemed necessary by the Commission to carry out its functions under this subchapter.

(Oct. 20, 1999, D.C. Law 13-38, § 1307, 46 DCR 6373.)

Legislative history of Law 13-38. — For Law 13-38, see notes following § 7-2901.

SUBTITLE L. SUBSTANCE ABUSE.

CHAPTER 30. CHOICE IN DRUG TREATMENT.

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|--|---|
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§ 7-3001. Legislative findings.

(a) The current system of treating substance abusers in the District does not serve the needs of the community. There are between 65,000 and 100,000 persons in the District who need treatment for substance abuse. In the first 11 months of FY1999, the Addiction Prevention and Recovery Administration ("APRA") served only 5,700 clients. No statistics are available regarding whether these individuals were successfully treated. Among other things, too few detoxification services slots create a bottleneck in its treatment programs.

(b) The financial costs associated with substance abuse are enormous. According to some estimates, these costs probably exceed \$1 billion in the District for health care expenditures, premature death, impaired productivity, motor vehicle crashes, crime, and social welfare cases due to alcohol and drug abuse. For every \$1 spent on substance abuse treatment an average of \$7 is saved in costs associated with criminal justice, health care and social services.

(c) Even more critical are the tragic human costs associated with substance abuse. Substance abuse is a major factor in crime, domestic violence, child abuse, joblessness, emergency room visits, AIDS cases, and public health in the District.

(d) In the District, the human costs are pervasive and devastating. Sixty-seven percent of recent offenders in the District tested positive in at least half of all drug tests. Similarly, 69% of APRA's clients have an arrest record. Eighty-five percent of child protection cases, 75% of foster care cases, and 35% of AIDS cases are related to drug abuse. Moreover, one in 7 mothers delivering babies test positive for drug use as well; 38% of emergency room visit patients are under the influence of alcohol. Finally, up to 50% of perpetrators of domestic violence have substance abuse problems.

(e) Access to meaningful treatment is clearly a major hurdle to recovery. Seventy-nine percent of APRA's clients were unemployed and had no insurance. Importantly, while 19.2% of APRA's clients are eligible for Medicaid, APRA does not access Medicaid dollars for outpatient and residential treatment services. This oversight results in the loss of millions of dollars for such services.

(f) The existing programs offered by APRA are insufficient. Sixty percent of substance abusers have psychiatric disorders, but only a fraction of those receive treatment. The Latino community is underserved because of the lack of bilingual residential treatment programs. Additionally, existing services fail to meet the treatment needs of youth, the elderly, pregnant and parenting women, and persons with disabilities.

(July 18, 2000, D.C. Law 13-146, § 2, 47 DCR 4350; Apr. 24, 2007, D.C. Law 16-305, § 29(a), 53 DCR 6198.)

Effect of amendments. — D.C. Law 16-305, in subsec. (f), substituted “persons with disabilities” for “the disabled”.

Legislative history of Law 13-146. — Law 13-146, the “Choice in Drug Treatment Act of 2000,” was introduced in Council and assigned Bill No. 13-405, which was referred to the Committee on Human Services. The Bill was

adopted on first and second readings on March 7, 2000, and April 4, 2000, respectively. Signed by the Mayor on April 20, 2000, it was assigned Act No. 13-329 and transmitted to both Houses of Congress for its review. D.C. Law 13-146 became effective on July 18, 2000.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 7-531.01.

§ 7-3002. Definitions.

For the purposes of this chapter, the term:

(1) “Addiction Prevention and Recovery Administration” (“APRA”) means the agency or the successor agency within the Department of Health responsible for administering substance abuse prevention and treatment services.

(2) “Aftercare plan” means the services or other planned activities designed to sustain therapeutic gains and promote further recovery of the client with regard to the issues relating to substance abuse.

(3) “Certification” means the process of ensuring that standards of care are met for the operation of a substance abuse treatment facility or program in the District of Columbia as described by regulation.

(4) “Client” means a person who is afflicted with and seeking to recover from substance abuse and has been selected for participation in the Drug Treatment Choice Program.

(5) “District” means the District of Columbia.

(6) “Drug” means any of the controlled substances enumerated in §§ 48-902.04, 48-902.06, 48-902.08, 48-902.10, or 48-902.12.

(7) “Dual diagnosis” means persons with the concurrent diagnoses of substance abuse and mental disease or disorder.

(8) “Intake screening and assessment” means the process performed by a qualified substance abuse counselor for the collection of relevant information about an applicant in order to determine eligibility for rehabilitation program services and the development of an initial treatment plan and any necessary referral.

(9) “Qualified substance abuse counselor” means a person who:

(A) Has received certification or credentials in substance abuse from the American Medical Association, the American Society for Addiction Medicine, the Nurses Professional Association, a state’s affiliate of the National Alcohol and Drug Counselors’ Association, or a state’s affiliate of the International Certification Reciprocity Consortium for Alcohol and Other Drugs of Abuse (“ICRC/AODA”);

(B) Has registered with the District of Columbia Board of Professional Counseling as a Registered Addiction Professional; and

(C) Completes 40 hours of continuing education every two years.

(10) "Rehabilitation plan" means the course of action to be taken to address the issues relating to substance abuse that were identified in the intake screening and assessment, including frequency of services, type of personnel providing services, monitoring of client progress, and plan revision.

(11) "Resident" means any person who lives in the District voluntarily, not for a temporary purpose, and has no present intention of removing himself or herself from the District. Temporary absence from the District, with subsequent returns to the District, or intent to return when the purposes of the absence have been accomplished shall not interrupt continuity of residence. For the purpose of this chapter, whether a person is a "resident" shall not depend upon the reason that the individual entered the District except that it may bear on whether the person is in the District for a temporary purpose.

(12) "Substance abuse" means a pattern of pathological use of a drug or alcohol that causes impairment in social or occupational functioning or produces physiological dependency evidenced by physical tolerance or physical symptoms when the drug or alcohol is not used.

(13) "Treatment provider" means an entity, a facility, or a program that has been certified by APRA to be responsible for the delivery of substance abuse detoxification, rehabilitation, and aftercare services to an identified target population.

(July 18, 2000, D.C. Law 13-146, § 3, 47 DCR 4350.)

Legislative history of Law 13-146. — For Law 13-146, see notes following § 7-3001.

§ 7-3003. Establishment of the Drug Treatment Choice Program; purpose.

There is established the Drug Treatment Choice Program ("Program"). The purpose of the Program is to provide District residents with access to substance abuse rehabilitation and aftercare plans at the treatment provider of their choice in consultation with a qualified substance abuse counselor, and subject to the availability of funds in the Addiction Recovery Fund.

(July 18, 2000, D.C. Law 13-146, § 4, 47 DCR 4350.)

Temporary Addition of Section. — Section 2(a) of D.C. Law 17-142 added a section to read as follows:

"Sec. 4a. Establishment of the Access to Recovery Voucher Program.

"(a) There is established the Access to Recovery Voucher Program ('ATR'), which shall be administered by APRA. The purpose of ATR shall be to provide District residents with access to culturally sensitive, substance abuse treatment and recovery support services for the duration of the 3-year federal Access to Recov-

ery grant awarded to APRA and to serve as an addition and complement to the Choice in Drug Treatment Program, established by section 4.

"(b) The duty of APRA to administer ATR shall include:

"(1) Community outreach and education;

"(2) Collaborating with federal and local agencies in regard to individuals returning to the community after being incarcerated who require substance abuse treatment or recovery support services; and

"(3) Ensuring that ATR achieves the pro-

jected target of serving over 11,000 individuals.”

Section 4(b) of D.C. Law 17-142 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary

(90 day) addition, see § 2(a) of Choice in Drug Treatment Emergency Amendment Act of 2008 (D.C. Act 17-280, January 29, 2008, 55 DCR 1534).

Legislative history of Law 13-146. — For Law 13-146, see notes following § 7-3001.

§ 7-3003.01. Establishment of the Access to Recovery Voucher program.

(a) There is established the Access to Recovery Voucher Program (“ATR”), which shall be administered by APRA. The purpose of ATR shall be to provide District residents with access to culturally sensitive substance-abuse treatment and recovery-support services for the duration of the 3-year federal Access to Recovery grant awarded to APRA and to serve as an addition and complement to the Choice in Drug Treatment Program, established by § 7-3003.

(b) The duty of APRA to administer ATR shall include:

(1) Community outreach and education;

(2) Collaborating with federal and local agencies in regard to individuals returning to the community after being incarcerated who require substance-abuse treatment or recovery-support services; and

(3) Ensuring that ATR achieves the projected target of serving over 11,000 individuals.

(July 18, 2000, D.C. Law 13-146, § 4a, as added Aug. 16, 2008, D.C. Law 17-219, § 5002(a), 55 DCR 7598.)

Legislative history of Law 17-219. — For Law 17-219, see notes following § 7-651.17.

Short title. — Short title: Section 5001 of

D.C. Law 17-219 provided that subtitle A of title V of the act may be cited as the “Choice in Drug Treatment Amendment Act of 2008”.

§ 7-3004. Establishment of the Addiction Recovery Fund.

(a)(1) There is established, as a nonlapsing, revolving fund, the Addiction Recovery Fund (“Fund”). Except as provided in subsection (a-1) of this section, the Fund shall be comprised of general revenue funds appropriated by a line item in the budget submitted pursuant to § 1-204.46, and authorized by Congress in an appropriations act for the purpose of the Drug Treatment Choice Program. The Mayor shall, subject to authorization by Congress in an appropriations act, deposit in the Fund any and all other funds received on behalf of the Fund for the purpose of the Drug Treatment Choice Program.

(2) All funds shall be deposited into the Fund without regard to fiscal year limitation pursuant to an act of Congress. All funds deposited into the Fund shall not revert to the General Fund of the District of Columbia at the end of any fiscal year or at any other time, but shall be continually available for the purpose of the Drug Treatment Choice Program, subject to authorization by Congress in an appropriations act.

(a-1) There is established within the Fund a segregated account to be known as the ATR Account, into which shall be deposited the federal grant funds awarded to APRA for ATR, to be expended solely for the purposes of ATR, in

accordance with federal requirements and regulations promulgated to implement this chapter.

(b) Except as provided in subsection (a-1) of this section, the Fund shall be used only for payments directly to treatment providers. The Fund shall be the sole source for payments to treatment providers under the Drug Treatment Choice Program. APRA shall administer the Drug Treatment Choice Program and the Fund from APRA's appropriated operating budget.

(c) Within 18 months of July 18, 2000, APRA shall develop a plan to incorporate all APRA funding for substance abuse treatment services into the Fund. APRA may propose to continue then existing contracts and grants upon a finding that the Program would not serve the specific needs of a particular clientele or group.

(d) The plan developed by APRA pursuant to subsection (c) of this section shall be submitted by the Mayor to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed plan, in whole or in part, by resolution within this 45-day review period, the proposed plan shall be deemed approved.

(July 18, 2000, D.C. Law 13-146, § 5, 47 DCR 4350; Oct. 3, 2001, D.C. Law 14-28, § 4202, 48 DCR 6981; Mar. 13, 2004, D.C. Law 15-105, § 50, 51 DCR 881; Aug. 16, 2008, D.C. Law 17-219, § 5002(b), 55 DCR 7598.)

Effect of amendments. — D.C. Law 14-28, in subsec. (a), designated par. (1), inserted “as a nonlapsing, revolving fund” before “established” in the first sentence of par. (1), and added par. (2).

D.C. Law 15-105, in subsec. (a)(1), validated a previously made technical correction.

D.C. Law 17-219, in subsecs. (a) and (b), inserted “Except as provided in subsection (a-1) of this section,”; and added subsec. (a-1).

Temporary Amendment of Section. — Section 2(b) of D.C. Law 17-142, in subsec. (a), substituted “Except as provided in subsection (a-1) of this section, the Fund shall be comprised” for “The Fund shall be comprised”; in subsec. (b), substituted “Except as provided in subsection (a-1) of this section, the Fund shall be used only for” for “The Fund shall be used only for”; and added subsec. (a-1) to read as follows:

“(a-1) There is established within the Fund a segregated account to be known as the ATR Account, into which shall be deposited the federal grant funds awarded to APRA for ATR,

to be expended solely for the purposes of ATR, in accordance with federal requirements and regulations promulgated to implement this act.”

Section 4(b) of D.C. Law 17-142 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 3802 of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

For temporary (90 day) amendment of section, see § 2(b) of Choice in Drug Treatment Emergency Amendment Act of 2008 (D.C. Act 17-280, January 29, 2008, 55 DCR 1534).

Legislative history of Law 13-146. — For Law 13-146, see notes following § 7-3001.

Legislative history of Law 14-28. — For Law 14-28, see notes following § 7-1203.01.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 7-136.

Legislative history of Law 17-219. — For Law 17-219, see notes following § 7-651.17.

§ 7-3005. Administration of the Drug Treatment Choice Program and Addiction Recovery Fund.

APRA shall administer the Program and Fund by:

- (1) Performing certification of treatment providers;

(2) Creating standardized intake forms and procedures to be utilized by APRA and treatment providers;

(3) Monitoring intake screening and assessments performed by qualified substance abuse counselors located within the APRA or the treatment providers;

(4) Determining whether the applicant is eligible to participate in the Program following the intake screening and assessment;

(5) Requiring the persons performing the intake screening and assessment, after determining eligibility, to share with the client the entire spectrum of treatment providers and to inform the client of his or her right to select the treatment provider of his or her choice in consultation with a qualified substance abuse counselor;

(6) Reviewing rehabilitation and aftercare plans, including estimated costs, submitted by treatment providers;

(7) Providing payment directly to treatment providers for services rendered at such times as established between APRA and the treatment provider; and

(8) Monitoring the rehabilitation and aftercare plans and the quality of the services rendered by the treatment providers.

(July 18, 2000, D.C. Law 13-146, § 6, 47 DCR 4350.)

Emergency legislation. — For temporary (90 day) addition, see § 2 of Choice in Drug Treatment Grants Emergency Act of 2005 (D.C. Act 16-149, July 26, 2005, 52 DCR 7191).

Legislative history of Law 13-146. — For Law 13-146, see notes following § 7-3001.

§ 7-3005.01. Certification and participation by treatment providers.

To improve access to substance abuse rehabilitation and aftercare for persons needing addiction treatment services, the Director of the Department of Health (“Director”) is authorized to exercise procurement authority to carry out the purposes of this chapter independent of the Office of Contracting and Procurement. The Director may enter into provider agreements or other agreements only with providers certified under Chapter 23 of Title 29 of the District of Columbia Municipal Regulations. It shall no longer be necessary for providers to be certified under Chapter 24 of Title 29 of the District of Columbia Municipal Regulations in order to be eligible to provide services under the Choice in Drug Treatment Program. The Director shall exercise this authority consistent with Unit A of Chapter 3 of Title 2, except with regard to the powers and duties outlined in § 2-301.05(a), (b), (c), and (e).

(July 18, 2000, D.C. Law 13-146, § 6a, as added Oct. 20, 2005, D.C. Law 16-33, § 5042, 52 DCR 7503.)

Emergency legislation. — For temporary (90 day) addition, see § 5042 of Fiscal Year 2006 Budget Support Emergency Act of 2005 (D.C. Act 16-168, July 26, 2005, 52 DCR 7667).

Legislative history of Law 16-33. — For Law 16-33, see notes following § 7-733.01.

Short title. — Short title of subtitle E of title V of Law 16-33: Section 5041 of D.C. Law 16-33

provided that subtitle E of title V of the act may be cited as the Choice in Drug Treatment Amendment Act of 2005.

§ 7-3006. Confidential records.

All information furnished to APRA pursuant to this chapter shall remain confidential and may be disclosed only to medical personnel for purposes of diagnosis and treatment; except, that with the prior written consent of the client, the information may be disclosed for the purposes of and in accordance with Chapter 2A of this chapter [§ 7-251 et seq.].

(July 18, 2000, D.C. Law 13-146, § 7, 47 DCR 4350; Dec. 4, 2010, D.C. Law 18-273, § 208, 57 DCR 7171.)

Effect of amendments. — D.C. Law 18-273 substituted “and treatment; except, that with the prior written consent of the client, the information may be disclosed for the purposes of and in accordance with Chapter 2A of this chapter” for “and treatment”.

Emergency legislation. — For temporary (90 day) amendment of section, see § 208 of Data-Sharing and Information Coordination Emergency Amendment Act of 2010 (D.C. Act 18-530, August 6, 2010, 57 DCR 8099).

For temporary (90 day) amendment of section, see § 208 of Data-Sharing and Information Coordination Congressional Review Emergency Amendment Act of 2010 (D.C. Act 18-582, October 20, 2010, 57 DCR 10118).

Legislative history of Law 13-146. — For Law 13-146, see notes following § 7-3001.

Legislative history of Law 18-273. — For Law 18-273, see notes following § 7-131.

§ 7-3007. Residency and insurance requirements.

In addition to other eligibility requirements established pursuant to this chapter, a prospective client shall be a District resident and not have insurance benefits available for substance abuse treatment. A client shall continue to be a resident while participating in the Program.

(July 18, 2000, D.C. Law 13-146, § 8, 47 DCR 4350.)

Legislative history of Law 13-146. — For Law 13-146, see notes following § 7-3001.

§ 7-3008. Benefits.

(a) APRA shall formulate guidelines that give priority for enrollment in the Program to any eligible minor, pregnant woman, or the parent, guardian, or other person who has legal custody of a minor.

(b)(1) A client with no dependent children shall receive a maximum of up to \$20,000 per year, subject to the availability of funds in the Fund. A client with a dependent child shall receive a maximum of up to \$40,000 per year, subject to the availability of funds in the Fund and the discretion of the Director of the Department of Health.

(2) The Director of the Department of Health is authorized to increase the maximum amounts set forth in this subsection to adjust for inflation.

(c) By waiver, approved by the Administrator of APRA, expenditures in excess of the maximum amounts stated in subsection (b) of this section may be authorized where good cause is shown.

(d) Nothing in this chapter shall be construed to create an entitlement to substance abuse treatment during any fiscal year if no funds remain available to the District government under a District or federal appropriation that has been enacted for the specific purpose of providing substance abuse treatment services.

(July 18, 2000, D.C. Law 13-146, § 9, 47 DCR 4350; Aug. 16, 2008, D.C. Law 17-219, § 5031, 55 DCR 7598.)

Effect of amendments. — D.C. Law 17-219 rewrote subsec. (b), which had read as follows: “(b) A client with no dependent children shall receive a maximum of up to \$10,000 per year, subject to the availability of funds in the Fund. A client with a dependent child or children shall receive a maximum of up to \$25,000 per year, subject to the availability of funds in the Fund.”

Legislative history of Law 13-146. — For Law 13-146, see notes following § 7-3001.

Legislative history of Law 17-219. — For Law 17-219, see notes following § 7-651.17.

Short title. — Short title: Section 5030 of D.C. Law 17-219 provided that subtitle M of title V of the act may be cited as the “Choice in Drug Treatment Maximum Benefit Amendment Act of 2008”.

§ 7-3009. Certification of treatment providers.

(a) In order to participate as a treatment provider in the Program, application shall be made to APRA for certification, the cost of which shall be paid by the treatment provider. Only Program-approved treatment providers shall be eligible to receive payments from the Fund.

(b)(1) Within 60 days after July 18, 2000, APRA shall submit to the Council for a 60-day period of review, excluding Saturdays, Sundays, legal holidays and days of Council recess, the specific criteria to be used in certifying treatment providers. If the Council does not approve or disapprove, in whole or in part, by resolution within the 60-day period of review, the criteria shall be deemed approved.

(2) At a minimum, the criteria shall require a demonstrated success in the rehabilitation services for which the treatment provider seeks certification and the financial viability of the treatment provider to perform the services for which it seeks certification. In addition, APRA may require the treatment provider to post a surety bond of up to \$50,000 in order to participate in the Program.

(c) APRA shall make every effort to seek out for certification a diversity of treatment providers who offer rehabilitation services to such targeted populations as African Americans, Latinos, Asians, offenders and ex-offenders, the elderly, persons with custody of minor children, gays, lesbians, bisexuals, transgenders, persons with HIV/AIDS, individuals with dual diagnoses, and persons with disabilities.

(d) APRA shall have the authority to revoke or suspend certification in cases of fraud, financial abuse, client abuse, improper clinical practices, improper practices by staff, or for other good cause.

(e) Except as provided in subsection (f) of this section, each treatment provider shall apply for recertification annually.

(f) If, after 2 successive recertifications, a treatment provider is found by APRA to be in substantial compliance with certification standards, annual

recertification shall not be required for as long as a treatment provider remains in substantial compliance.

(g) Additional certification of a treatment provider shall be required if the scope of its services changes.

(July 18, 2000, D.C. Law 13-146, § 10, 47 DCR 4350; Apr. 24, 2007, D.C. Law 16-305, § 29(b), 53 DCR 6198.)

Effect of amendments. — D.C. Law 16-305, in subsec. (c), substituted “persons with disabilities” for “the disabled”.

Legislative history of Law 16-305. — For Law 16-305, see notes following § 7-531.01.

Legislative history of Law 13-146. — For Law 13-146, see notes following § 7-3001.

§ 7-3010. Quality assurance for treatment providers.

Prior to implementing the Program, APRA shall:

(1) Establish a Quality Assurance Division staffed with personnel to monitor the performance and quality of services of treatment providers;

(2) Train quality assurance staff on the tools and protocols used to effectively monitor treatment providers; and

(3) Develop policies, procedures, and instruments to measure qualitative and quantitative outcomes of treatment services.

(July 18, 2000, D.C. Law 13-146, § 11, 47 DCR 4350.)

Legislative history of Law 13-146. — For Law 13-146, see notes following § 7-3001.

§ 7-3011. Aftercare plan.

(a) Prior to discharge from the rehabilitation plan, an aftercare plan shall be developed by the treatment provider in consultation with the client. The aftercare plan shall include periodic interviews by the treatment provider with the client within one month, three months, and six months after discharge and include procedures for collecting information about outcomes of care from the client.

(b) APRA shall, at the end of each fiscal year, compile success rates for treatment providers and submit them to the Council by November 1 of each year.

(July 18, 2000, D.C. Law 13-146, § 12, 47 DCR 4350.)

Legislative history of Law 13-146. — For Law 13-146, see notes following § 7-3001.

§ 7-3012. Infrastructure development plan.

Within 180 days after July 18, 2000, APRA shall establish a comprehensive plan to develop the District’s substance abuse treatment and prevention infrastructure. This plan shall be based on a rigorous needs assessment and

current service inventory to identify gaps in treatment modalities by geographic location.

(July 18, 2000, D.C. Law 13-146, § 13, 47 DCR 4350.)

Legislative history of Law 13-146. — For Law 13-146, see notes following § 7-3001.

§ 7-3013. Program evaluation.

APRA shall review the success of the Program and perform a comprehensive evaluation of all APRA substance abuse treatment programs and submit its report to the Council by January 15, 2003.

(July 18, 2000, D.C. Law 13-146, § 14, 47 DCR 4350.)

Legislative history of Law 13-146. — For Law 13-146, see notes following § 7-3001.

§ 7-3014. Choice in Drug Treatment Advisory Commission.

(a)(1) There is established a Choice in Drug Treatment Advisory Commission (“Commission”) with the purpose of advising on the implementation of the Program and recommending improvements to its infrastructure to the Council and the Mayor.

(2) The Commission shall consider approaches to reduce barriers to meaningful choice in drug treatment by working closely with APRA:

- (A) To establish clear access to services;
- (B) To provide for linkages among providers and other support services;
- (C) To assure that services are culturally competent and sensitive;
- (D) To assure that the delivery of services adjusts to changing needs and emerging issues; and

(E) To provide any other assistance that may be required.

(3) The Commission shall submit its recommendations to the Council and the Mayor in the form of a report, with specific steps for implementing its recommendations, within one year of May 18, 2004, and every 6 months thereafter.

(b)(1) The Commission shall be composed of 13 members as follows:

(A) One representative from APRA, to be appointed by the Mayor for an initial term of 4 years;

(B) One representative from APRA who specializes in youth treatment and one representative from the Department of Mental Health, to be appointed by the Mayor for initial terms of 3 years;

(C) One representative from APRA and one representative from the Department of Human Services, Family Services Administration, to be appointed by the Mayor for initial terms of 2 years;

(D) One treatment provider who treats youths, one representative from the housing sector who assists homeless persons who have substance abuse problems to obtain housing, and one representative from the medical profession, to be appointed by the Council for initial terms of 4 years;

(E) Two treatment providers, one of whom must specialize in the treatment of Latinos with substance abuse issues, and one representative from the employment sector, to be appointed by the Council for initial terms of 3 years; and

(F) One treatment provider and one client representative, to be appointed by the Council for initial terms of 2 years.

(2) All appointments, following the initial appointments made pursuant to paragraph (1) of this subsection, shall be for terms of 3 years.

(3) All initial appointments made pursuant to paragraph (1) of this subsection shall be made within 180 days of May 18, 2004.

(4) A vacancy shall be filled in the same way the initial appointment was made.

(5) The initial Chairperson shall be appointed by the Council from among the members of the Commission. Subsequent chairpersons shall be appointed by the members of the Commission from among the members of the Commission.

(6) Each member shall serve without compensation.

(c) The Chairperson, or the Chairperson's designee, shall convene all meetings of the Commission. Seven members of the Commission shall constitute a quorum.

(d) The Commission shall have the authority to create and operate under its own rules of procedure, consistent with this chapter and Chapter 5 of Title 2.

(e) All recommendations and reports prepared and submitted by the Commission shall be a matter of public record.

(f) The Commission shall have the authority to request directly from each department, agency, or instrumentality of the District government, and each department, agency, or instrumentality is hereby authorized to furnish directly to the Commission upon its request, any information deemed necessary by the Commission to carry out its functions under this chapter.

(g) The Commission is authorized to use space and supplies owned or rented by the District government.

(h) Funding for the Commission's operations shall be subject to annual appropriations, private sector assistance, or both.

(July 18, 2000, D.C. Law 13-146, § 15, 47 DCR 4350; May 18, 2004, D.C. Law 15-155, § 2, 51 DCR 3389.)

Effect of amendments. — D.C. Law 15-155 rewrote the section.

Legislative history of Law 13-146. — For Law 13-146, see notes following § 7-3001.

Legislative history of Law 15-155. — Law 15-155, the "Choice in Drug Treatment Advisory Commission Amendment Act of 2004", was introduced in Council and assigned Bill No.

15-606, which was referred to Committee on Human Services. The Bill was adopted on first and second readings on February 3, 2004, and March 2, 2004, respectively. Signed by the Mayor on March 18, 2004, it was assigned Act No. 15-390 and transmitted to both Houses of Congress for its review. D.C. Law 15-155 became effective on May 18, 2004.

§ 7-3015. Rulemaking.

(a)(1) Within 180 days of July 18, 2000, the Mayor, pursuant to subchapter I of Chapter 5 of Title 2, shall issue rules to implement the provisions of this

chapter. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(2)(A) Except as provided in subparagraph (B) of this paragraph, all rules promulgated pursuant to paragraph (1) of this subsection shall apply to the provisions of §§ 7-3003.01 and 7-3004(a-1).

(B) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, may issue rules to apply specifically to the provisions of §§ 7-3003.01 and 7-3004(a-1). Any such rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution, within this 45-day review period, the proposed rules shall be deemed approved.

(b) Nothing in this section shall affect any requirements imposed upon the Mayor by subchapter I of Chapter 5 of Title 2.

(July 18, 2000, D.C. Law 13-146, § 16, 47 DCR 4350; Aug. 16, 2008, D.C. Law 17-219, § 5002(c), 55 DCR 7598.)

Effect of amendments. — D.C. Law 17-219, in subsec. (a), designated par. (1) and added par. (2).

Temporary Amendment of Section. — Section 2(c) of D.C. Law 17-142, in subsec. (a), designated the existing text as par. (1), and added par. (2) to read as follows:

“(2)(A) Except as provided in subparagraph (B) of this paragraph, all rules promulgated pursuant to paragraph (1) of this subsection shall apply to the provisions of the Choice in Drug Treatment Temporary Amendment Act of 2008, passed on 2nd reading on February 5, 2008 (Enrolled version of Bill 17-566) (‘temporary act’).

“(B) The Mayor, pursuant to Title 1 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.), may issue rules to apply specifically to the provisions of the temporary act. Any such rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the

Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.”

Section 4(b) of D.C. Law 17-142 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2(c) of Choice in Drug Treatment Emergency Amendment Act of 2008 (D.C. Act 17-280, January 29, 2008, 55 DCR 1534).

Legislative history of Law 13-146. — For Law 13-146, see notes following § 7-3001.

Legislative history of Law 17-219. — For Law 17-219, see notes following § 7-651.17.

Delegation of Authority. — Delegation of Authority Pursuant to D.C. Law 13-146, the “Choice in Drug Treatment Act of 2000”, see Mayor’s Order 2002-73, April

Resolutions. — Resolution 17-738, the “Access to Recovery Program Emergency Approval Resolution of 2008”, was approved effective July 15, 2008.

CHAPTER 31. SUBSTANCE ABUSE PROGRAM FOR YOUTH.

Sec.
7-3101. Establishment.
7-3102. One-year report.

Sec.
7-3103. Rules.

§ 7-3101. Establishment.

(a) The Mayor shall establish, by contract, a substance abuse program for youths 14 through 20 years of age. The Addiction Prevention and Recovery Administration shall administer the program from its appropriated operating budget.

(b) In fiscal year 2005, the Addiction Prevention and Recovery Administration shall:

(1) Provide no less than 400 slots in the program for youth treatment services;

(2) Provide, at minimum, an average of 15 youth residential treatment slots, but at no time less than 12 residential slots, to be used exclusively to serve 120 youth;

(3) Provide a minimum of 385 community-based youth outpatient treatment slots exclusively for youth, of which 75 intensive outpatient slots and 125 outpatient treatment slots shall be utilized exclusively to provide a continuum of community-based care services for youth in the care of the Youth Services Administration who are released from the Oak Hill Youth Center.

(c) To support the infrastructure necessary for implementation and ongoing monitoring of quality assurance for the youth substance abuse treatment program, 3 full-time employees, personnel grade DSS-11/12, shall be detailed from the Department of Human Services, Youth Services Administration to the Department of Health, Addiction Prevention and Recovery Administration to serve as Program Monitors/Coordinators.

(d)(1) The Addiction Prevention and Recovery Administration shall fund 2 positions to support the administration, service delivery, and monitoring of services provided to youth under the care of the Youth Services Administration. One position shall be titled the Program Manager, and shall be classified as a personnel grade MSS-13. The second position shall be an Administrative Assistant, classified as a personnel grade DSS-9.

(2) The Program Manager shall serve as a continuity of care liaison between the Addiction Prevention and Recovery Administration and the Youth Services Administration, and shall be housed at, or report regularly to, the Oak Hill Youth Center.

(3) The Program Manager shall work closely with the Youth Services Administration to assure that as slots are identified, filled, monitored, and maintained that all services are beneficial to the Youth Services Administration's efforts to comply with the *Jerry M v. District of Columbia* consent decree.

(4) The Program Manager shall be responsible for working closely with other Addiction Prevention and Recovery Administration staff to utilize Substance Abuse Rehabilitation Option services.

(e) A memorandum of understanding, or any other formal agreement deemed necessary to facilitate the implementation of the priority outpatient

slots for the Youth Services Administration, shall be finalized and signed no later than October 1, 2004. A copy of the agreement shall be provided to the Council's Committee on Human Services.

(Oct. 3, 2001, D.C. Law 14-28, § 4212, 48 DCR 6981; Nov. 13, 2003, D.C. Law 15-39, § 2602, 50 DCR 5668; Dec. 7, 2004, D.C. Law 15-205, § 5502, 51 DCR 8441.)

Effect of amendments. — D.C. Law 15-39, redesignated the section as subsec. (a); in the newly designated subsec. (a), substituted "14" for "16"; and added subsec. (b).

D.C. Law 15-205, in subsec. (a), substituted "a substance abuse program for youths 14 through 20 years of age" for "a 2-year pilot substance abuse program for youths 14 through 21 years of age"; rewrote subsec. (b); and added subsecs. (c), (d), and (e). Prior to amendment, subsec. (b) had read as follows: "(b) The Addiction Prevention and Recovery Administration shall provide no less than 375 slots in the pilot program for residential treatment services for youths ages 14-21 in Fiscal Year 2004, with 100 of those slots being reserved for priority treatment of youths in the care of the Youth Services Administration. The 100 slots reserved for priority treatment of youths in the care of the Youth Services Administration shall be available no later than October 31, 2003, pursuant to an agreement between the Addiction Prevention and Recovery Administration and the Youth Services Administration."

Emergency legislation. — For temporary (90 day) addition of section, see § 3812 of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

For temporary (90 day) amendment of section, see § 2502 of Fiscal Year 2004 Budget Support Emergency Act of 2003 (D.C. Act 15-105, June 20, 2003, 50 DCR 5613).

For temporary (90 day) amendment of section, see § 2502 of Fiscal Year 2004 Budget Support Congressional Review Emergency Act

of 2003 (D.C. Act 15-149, September 22, 2003, 50 DCR 8360).

For temporary (90 day) amendment of section, see § 5502 of Fiscal Year 2005 Budget Support Emergency Act of 2004 (D.C. Act 15-486, August 2, 2004, 51 DCR 8236).

For temporary (90 day) amendment of section, see § 5502 of Fiscal Year 2005 Budget Support Congressional Review Emergency Act of 2004 (D.C. Act 15-594, October 26, 2004, 51 DCR 11725).

Legislative history of Law 14-28. — Law 14-28, the "Fiscal Year 2002 Budget Support Act of 2001", was introduced in Council and assigned Bill No. 14-144, which was referred to the Committee Of the Whole. The Bill was adopted on first and second readings on May 1, 2001, and June 5, 2001, respectively. Signed by the Mayor on June 29, 2001, it was assigned Act No. 14-85 and transmitted to both Houses of Congress for its review. D.C. Law 14-28 became effective on October 3, 2001.

Legislative history of Law 15-39. — For Law 15-39, see notes following § 7-732.

Legislative history of Law 15-205. — For Law 15-205, see notes following § 7-503.03.

Short title. — Short title of title XXVI of Law 15-39: Section 2601 of D.C. Law 15-39 provided that title XXVI of the act may be cited as the Substance Abuse Treatment for Youth Amendment Act of 2003.

Short title of subtitle E of title V of Law 15-205: Section 5501 of D.C. Law 15-205 provided that subtitle E of title V of the act may be cited as the Substance Abuse Treatment for Youth Amendment Act of 2004.

§ 7-3102. One-year report.

The Addiction Prevention and Recovery Administration shall submit a performance report on the program to the Council no later than 30 days after the program has been in operation for one year. The report shall include documentation of the number of youths served, the rate of recidivism of youths served, the average cost of services per youth served, and how the program's success rate compares to that of similar programs in other jurisdictions.

(Oct. 3, 2001, D.C. Law 14-28, § 4213, 48 DCR 6981.)

Emergency legislation. — For temporary (90 day) addition of section, see § 3813 of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

Legislative history of Law 14-28. — For Law 14-28, see notes following § 7-3101.

§ 7-3103. Rules.

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, shall issue rules to implement the provisions of this chapter.

(Oct. 3, 2001, D.C. Law 14-28, § 4214, 48 DCR 6981.)

Emergency legislation. — For temporary (90 day) addition of section, see § 3814 of Fiscal Year 2002 Budget Support Emergency Act of 2001 (D.C. Act 14-124, August 3, 2001, 48 DCR 7861).

Legislative history of Law 14-28. — For Law 14-28, see notes following § 7-3101.

